

2008

Bruce Edwards v. Powder Mountain, Inc., Powder Mountain Water and Sewer, Alvin Cobabe, Jamie Lythgoe, June Cobabe, Chuck Panter, Joann Panter, Susan Lowther, Lawar Lowther, Ray W. Moss, Merlin J. Tomlinson, Elergy Voge, Clair Van Meeterren, Wayne Stokes, Kim Remmash, J. Ulie Batchelar, Powder Mountain West Landowners Association, Gary L. Jacobs, Gordon James : Brief of Appellee

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IN THE UTAH COURT OF APPEAL

BRUCE EDWARDS,

Plaintiff-Appellant

vs.

Case No. 20080144-CA

POWDER MOUNTAIN INC.;  
POWDER MOUNTAIN WATER AND  
SEWER; ALVIN COBABE; JAMIE  
LYTHGOE; JAMIE LYTHGOE dba  
POWDER MOUNTAIN WATER AND  
SEWER; JUNE COBABE; CHUCK  
PANTER; JOANN PANTER; SUSAN  
LOWTHER; LAVAR LOWTHER;  
RAY W. MOSS; MERLIN J.  
TOMLINSON; ELERGY VOGUE;  
CLAIR VAN MEETERREN; WAYNE  
STOKES; KIM REMMASH; J. ULIE  
BATCHELAR; POWDER  
MOUNTAIN WEST LANDOWNERS  
ASSOCIATION; GARY L. JACOBS;  
GORDON JAMES; & JOHN DOES 1-  
25,

Defendants-Appellees.

BRIEF OF POWDER MOUNTAIN WATER & SEWER DISTRICT  
APPELLEES

Appeal from the Second Judicial District Court of Weber County,  
Judge Jones

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and its Board Members*

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## TABLE OF CONTENTS

	Page
STATEMENT RE: PLAINTIFF’S BRIEF ..	1
STATEMENT REGARDING JURISDICTION .....	1
STATEMENT OF THE CASE .....	2
STATEMENT OF FACTS..	4
SUMMARY OF ARGUMENTS .....	10
ARGUMENT .....	11
I. THE COURT PROPERLY EXERCISED ITS DISCRETION IN REDUCING PLAINTIFF’S REQUEST FOR ADMISSIONS FROM 458 TO 50 .....	11
II. THE COURT PROPERLY DETERMINED THAT FILING A TAX LIEN IS NOT A CIVIL ACTION SUBJECT TO A STATUTE OF LIMITATIONS ....	12
III. THE COURT CORRECTLY RULED THAT PLAINTIFF’S CLAIMS REGARDING THE 1995 AND 1998 LIENS ARE BARRED BY THE STATUTE OF LIMITATIONS AND THE COMPULSORY COUNTERCLAIM RULE .....	13
IV THE COURT PROPERLY EXERCISED ITS DISCRETION BY GRANTING A PROTECTIVE ORDER TO THE DISTRICT .....	14
V THE DISTRICT PROPERLY ASSESSED PLAINTIFF’S PROPERTY AND CERTIFIED IT AS A LIEN AND PLAINTIFF DID NOT PAY THE TAX UNDER PROTEST AND, ACCORDINGLY, LACKS STANDING.....	15
VI. THE COURT PROPERLY FOUND THAT PLAINTIFF’S LITIGATION CONDUCT WARRANTED DISMISSAL WITHOUT PREJUDICE .....	17

VII.	THE COURT PROPERLY FOUND THAT PLAINTIFF’S LITIGATION CONDUCT WAS HARASSING AND WARRANTED DISMISSAL WITHOUT PREJUDICE .....	19
VIII.	THE COURT PROPERLY FOUND THAT PLAINTIFF’S LITIGATION PRACTICE OF “AUGMENTING” HIS PLEADINGS TO INCREASE THE COST OF LITIGATION WARRANTED DISMISSAL WITHOUT PREJUDICE .....	20
IX.	THE COURT PROPERLY ISSUED ITS <i>SUA SPONTE</i> ORDER TO SHOW CAUSE REGARDING PLAINTIFF’S RULE 11 COMPLAINT .....	20
X.	THE COURT PROPERLY RULED THAT PLAINTIFF VIOLATED RULE 11 .....	21
XI.	THE COURT PROPERLY FOUND THAT SANCTIONS WERE WARRANTED AND IMPOSED APPROPRIATE SANCTIONS.....	21
XII.	THE COURT PROPERLY FOUND THAT JUDGE JONES SHOULD NOT BE DISQUALIFIED .....	22
XIII.	THE COURT PROPERLY AWARDED ATTORNEYS’ FEES TO THE DISTRICT PURSUANT TO § 78-27-56.....	22
CONCLUSION .....		23
ADDENDUM (Complaint) .....		Record on Appeal 583-641

## TABLE OF AUTHORITIES

### Cases

<i>Brown v. Division of Water Rights of Dept. of Natural Resources</i> , 2008 UT App. 353 ¶6, 195 P.3d 933 .....	17
<i>Gardner v. Board of County Commissioners of Wasatch County</i> , 2008 UT 6 ¶ 51, 178 P.3d 893 .....	11
<i>In re Hoopiiani Trust</i> , 2006 UT 53 ¶ 27, 144 P.3d 1129 .....	13
<i>Kilpatrick v. Bullough Abatement</i> , 2008 UT 82 ¶ 23, -- P.3d -- .....	18
<i>Nu-Med USA v. 4Life, L.C.</i> , 2008 UT 50 ¶ 15-18, 190 P.3d 1264 .....	14
<i>RJW Media, Inc. v. The CIT Group</i> , 2008 UT App. 476 ¶ 24, -- P.3d -- .....	15
<i>R &amp; R Energies v. Mother Earth Industries</i> , 236 P.2d 1080 (Utah 1997) .....	21
<i>Western Water v. Olds</i> , 2008 UT 18 ¶42, 183 P.3d 578 .....	17
<i>Woodbury Amsource, Inc. v. Salt Lake County</i> 2003 UT 28, ¶12, 73 P.3d 362 .....	16

### Rules

Utah R.App.P. 24(a)(1) .....	1
Utah R.App.P. 24(a)(5) .....	1
Utah R.App.P. 24(a)(6) .....	1
Utah R.App.P. 24(a)(7) .....	1
Utah R.App.P. 24(a)(9) .....	1
U.R.C.P. 3(a) .....	13
U.R.C.P. 4 .....	13

U.R.C.P. 11 .....	11, 20
U.R.C.P. 26(a)(2)(A)(iv)-(d) .....	14
U.R.C.P. 26(b)(3) .....	12
U.R.C.P. 26(c) .....	14
U.R.C.P. 26(f).....	12
U.R.C.P. 26(f)(2)(C).....	12

### Statutes

Utah Code § 17A-2-301 <i>et seq</i> .....	2, 16
Utah Code § 17A-2-310 .....	16
Utah Code § 17A-2-310(3).....	2
Utah Code § 17A-2-416 .....	2
Utah Code § 17A-2-1321 .....	3
Utah Code § 59-2-1325 .....	16
Utah Code § 59-2-1327 .....	16, 17
Utah Code § 59-2-1331 .....	3
Utah Code, Title 78 .....	10, 13
Utah Code § 78-27-56 .....	11, 23
Utah Code § 78B-2-101, 102.....	13

## **STATEMENT RE: PLAINTIFF'S BRIEF**

Plaintiff's Brief fails to conform to the requirements of the Rules of Appellate Procedure in numerous material respects:

1. Plaintiff fails to provide a complete list of all parties. *See* Utah R.App.P. 24(a)(1);
2. Plaintiff fails to cite to the record showing where the issues on appeal were preserved in the trial court. *See* Utah R.App.P. 24(a)(5);
3. Plaintiff fails to provide the statute underlying the basis for Power Mountain Water and Sewer District's ("the District") certification of his unpaid assessments and charges as a lien on his property. *See* Utah R.App.P. 24(a)(6);
4. Plaintiff fails to provide any citation to the record in his Statement of Facts. *See* Utah R.App.P. 24(a)(7); and
5. Plaintiff fails to marshal the record evidence that supports his challenge of the lower court's findings that Plaintiff's Complaint was for harassment purposes and unnecessarily increase the cost of litigation. *See* Utah R.App.P. 24(a)(9). Such Complaint is attached hereto as an Addendum.

## **STATEMENT REGARDING JURISDICTION**

As more fully set forth in Argument V, *infra*, Plaintiff challenges the legality of the taxes and charges imposed by the District. Contrary to state law, Plaintiff did not pay such charges and taxes under protest prior to filing his challenge in district court. Plaintiff's failure to satisfy this mandatory condition precedent deprives him of standing and this Court of jurisdiction.



## STATEMENT OF THE CASE

Over twenty years ago, Plaintiff purchased a lot within the jurisdiction of the Powder Mountain Water and Sewer District (“the District”). The District is a special improvement district organized by Weber County pursuant to former section 17A-2-301 *et seq.* The District was statutorily authorized to issue bonds and assess charges to all property owners. Plaintiff admits that he never paid such charges. Accordingly, the District certified certain unpaid charges and assessments to the Weber County Treasurer’s Office pursuant to Utah Code § 17A-2-310(3) which, in relevant part provided, at the time:

Whether or not a district operates a waterworks system, any unpaid and delinquent charges for sewer or water service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located. The amount of the delinquent charges, together with interest and penalties, shall immediately upon the certification become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a lien on the premises and are collectible. All methods of enforcement available for the collection of general county taxes, including sale of delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges.

*See Record on Appeal pp. 132 and 135-136.*

Further, at the time, Utah Code provided as follows:

**17A-2-416 Delinquent fees and charges to become lien when certified.**

The governing authority of a service area may, by ordinance or resolution, provide that fees and charges for commodities, services, and facilities supplied by the service area shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges,

together with applicable penalties and applicable interest established in Section 59-2-1331 shall, immediately upon certification, become a lien on the delinquent property on a parity with and collected at the same time and in the same manner as general county property taxes that are a lien on the premises as provided in Title 59, Chapter 2, Part 13.<sup>1</sup>

Plaintiff filed his 60-page Complaint containing 489 numbered paragraphs and alleging 31 causes of action against the District and its Board Members. As more fully set forth in V, *infra*, Plaintiff has failed to comply with a mandatory condition precedent to bringing this action and lacks standing. Accordingly, this Court lacks jurisdiction to hear Plaintiff's appeal. In addition, even assuming, *arguendo*, that Plaintiff has standing, his Arguments are without merit.

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<sup>1</sup> See also former § 17A-2-1321 which reads:

17A-2-1321. Delinquent fees and charges.

(1) Except as provided in Subsection (3), the governing authority of a special service district may, by ordinance or resolution, provide that fees and charges for garbage or fire protection services supplied by the special service district shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located.

(2) These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises.

(3) This section does not apply to a special service district's fees and charges if the governing authority of the county or municipality that established the special service district levies a tax for district purposes on taxable property within the special service district under Section 17A-2-1322.

These sections were repealed in 2007 and the successor statutory authorization is currently embodied in § 17B-1-902.

## STATEMENT OF FACTS

1. Plaintiff filed his 60-page, Complaint on March 22, 2006. *See* Record on Appeal pp. 583-642 and the District's Addendum.
2. The District filed its Answer on April 19, 2006. *See* Record on Appeal pp. 14-17.  
  
Subsequent to the filing of the District's Answer and prior to the issuance of the Court's Order to Show Cause, Plaintiff filed the following pleadings against the District:<sup>2</sup>
3. Memorandum in Support of Motion for Declaratory Judgment that *Defendant Powder Mountain Water and Sewer Liens are Void* filed May 5, 2006. *See* Record on Appeal pp. 18-30.
4. Affidavit of Bruce Edwards in Support of Motion for Partial Summary Judgment filed May 5, 2006. *See* Record on Appeal pp. 31-35.
5. Motion for Declaratory Judgment that *Defendant Powder Mountain Water and Sewer Liens are Void* filed May 5, 2006. *See* Record on Appeal pp.36-37.
6. 458 Request for Admissions in May 2006. *See* Record on Appeal pp.74-76.

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<sup>2</sup> Many other pleadings were filed against the Defendant Homeowners Association. *See* Record on Appeal.

7. Memorandum in Support of Plaintiff's Motion in Opposition to Defendant's Motion for Enlargement of Time to Respond to Motion for Partial Summary Judgment filed May 30, 2006. *See* Record on Appeal pp. 81-89.
8. Affidavit of Bruce Edwards in Support of Plaintiff's Oppression [sic] to Defendant's Motion for Enlargement of Time to Respond to Motion for Partial Summary Judgment filed May 30, 2006. *See* Record on Appeal pp. 90-94.
9. Affidavit of Bruce Edwards in Support of Plaintiff's Motion in Oppression [sic] to Defendant's Motion for Protective Order filed May 30, 2006. *See* Record on Appeal pp. 95-100.
10. Plaintiff's Motion in Opposition to Defendant's Motion for Protective Order filed May 30, 2006. *See* Record on Appeal p. 101.
11. Plaintiff's Motion in Opposition to Defendant's Motion for Enlargement of Time to Respond to Motion for Partial Summary Judgment for Protective Order filed May 30, 2006. *See* Record on Appeal p.102.
12. Memorandum in Opposition to Defendant Powder Mountain Water and Sewer's Motion for a Protective Order filed May 30, 2006. *See* Record on Appeal pp.103-117.
13. Plaintiff's Notice to Submit for Decision and Request for Hearing on Defendant's Motion for Enlargement of Time for Partial Summary Judgment filed June 14, 2006. *See* Record on Appeal pp. 118-119.

14. Plaintiff's Notice to Submit for Decision and Request for Hearing on Defendant's Motion for Protective Order filed June 14, 2006. *See* Record on Appeal pp. 120-121.

15. Plaintiff's Notice to Submit for Decision and Request for Hearing on Plaintiff's Motion for Declaratory Judgment that Defendant Powder Mountain Water and Sewer Liens are Void filed June 14, 2006. *See* Record on Appeal pp.122-123.

16. Affidavit of Bruce Edwards in Support of Motion for Enlargement to Respond to Defendant Powder Mountain Water and Sewer Counter-Motion for Summary Adjudication and Memorandum in Opposition to Motion for Partial Summary Adjudication filed July 12, 2006. *See* Record on Appeal pp.155-156.

17. Plaintiff's Motion for Enlargement of Time to Respond to Defendant Powder Mountain Water and Sewer Counter-Motion for Summary Adjudication and Memorandum in Opposition to Motion for Partial Summary Adjudication filed July 12, 2006. *See* Record on Appeal pp. 157-159.

18. Motion to Strike Powder Mountain Water and Sewer Counter-Motion for Summary Adjudication and Memorandum in Opposition to Motion for Summary Adjudication filed July 12, 2006. *See* Record on Appeal pp. 160-161.

19. Memorandum in Support of Motion to Strike Powder Mountain Water and Sewer Counter-Motion for Summary Adjudication and Memorandum in Opposition to Motion for Summary Adjudication filed July 12, 2006. *See* Record on Appeal pp. 162-165.

20. Affidavit of Bruce Edwards in Support of Motion to Strike Powder Mountain Water and Sewer Counter-Motion for Summary Adjudication and Memorandum in Opposition to Motion for Summary Adjudication filed July 12, 2006. *See* Record on Appeal pp. 166-169.

21. A second Memorandum in Support of Motion to Strike Powder Mountain Water and Sewer Counter-Motion for Summary Adjudication and Memorandum in Opposition to Motion for Summary Adjudication filed July 12, 2006. *See* Record on Appeal pp. 170-172.

22. Plaintiff's Motion to Strike Powder Mountain Water and Sewer's Opposition to Motion to Strike filed August 4, 2006. *See* Record on Appeal p. 177.

23. Memorandum in Support of Plaintiff's Motion to Strike Powder Mountain Water and Sewer's Opposition to Motion to Strike filed August 4, 2006. *See* Record on Appeal pp. 178-181.

24. Affidavit of Bruce Edwards in Support of Plaintiff's Motion to Strike Powder Mountain Water and Sewer's Opposition to Motion to Strike filed August 4, 2006. *See* Record on Appeal pp. 182-184.

25. Affidavit of Bruce Edwards in Support of Reply Memorandum in Support of Motion for Partial Summary Adjudication and Memorandum in Opposition to Cross-Motion for Partial Summary Adjudication filed October 4, 2006. *See* Record on Appeal pp. 194-202.

26. Reply Memorandum in Support of Motion for Partial Summary Adjudication and Memorandum in Opposition to Cross-Motion for Partial Summary Adjudication filed October 4, 2006. *See* Record on Appeal pp. 203-227.

27. Plaintiff's Motion for Declaratory Judgment that Defendant Powder Mountain Water and Sewer Liens are Void and Dismiss Defendant's Counter-Motion of Summary Adjudication filed October 4, 2006. *See* Record on Appeal pp. 230-263.

28. Motion for Summary Judgment that Defendant Powder Mountain Water Liens are Overstated filed November 13, 2006. *See* Record on Appeal pp. 284-285.

29. Memorandum in Support of Motion for Summary Judgment that Defendant Powder Mountain Water Liens are Overstated filed November 13, 2006. *See* Record on Appeal pp. 286-295.

30. Motion for Partial Summary Judgment that Powder Mountain Water Sewer Billing Policy Violates Utah Code filed November 13, 2006. *See* Record on Appeal pp. 296-297.

31. Memorandum in Support of Motion for Partial Summary Judgment that Powder Mountain Water Sewer Billing Policy Violates Utah Code filed November 13, 2006. *See* Record on Appeal pp. 298-306.

32. Affidavit of Bruce Edwards in Support of Motion for Partial Summary Judgment that Powder Mountain Water Sewer Billing Policy Violates Utah Code filed November 13, 2006. *See* Record on Appeal pp. 307-312.

33. Motion for Partial Summary Judgment that Defendant Powder Mountain Water and Sewer Charges for Vacant Lots Violate Utah Code filed November 13, 2006. *See* Record on Appeal pp. 313-314.

34. Memorandum in Support of Motion for Partial Summary Judgment that Defendant Powder Mountain Water and Sewer Charges for Vacant Lots Violate Utah Code filed November 13, 2006. *See* Record on Appeal pp. 315-326

35. Affidavit of Bruce Edwards in Support of Motion for Partial Summary Judgment filed November 13, 2006. *See* Record on Appeal pp. 327-341.

36. Motion for Partial Summary Judgment that Defendants Powder Mountain Water and Sewer Policy is in Violation of Utah Code filed November 13, 2006. *See* Record on Appeal pp. 342-343.

37. Memorandum in Support of Motion for Summary Judgment that Defendant Powder Mountain Water and Sewer Termination Policy is in Violation of Utah Code filed November 13, 2006. *See* Record on Appeal pp. 344-355.

38. Affidavit of Bruce Edwards in Support of Motion for Summary Judgment that Defendant Powder Mountain Water and Sewer Termination Policy is in Violation of Utah Code filed November 13, 2006. *See* Record on Appeal pp. 356-371.



39. Affidavit of Bruce Edwards in Support of Motion for Partial Summary Judgment filed November 13, 2006. *See* Record on Appeal pp. 372-385.<sup>3</sup>

### SUMMARY OF ARGUMENTS

The District responds to Plaintiff's Arguments *seriatim*:

I. The court properly exercised its discretion in reducing Plaintiff's Request for Admissions from 458 to 50.

II.. The court properly determined that filing a tax lien is not a civil action subject to Title 78 statute of limitations.

III. The court correctly ruled that Plaintiff's claims regarding the 1995 and 1998 liens were barred by the statute of limitations and the compulsory counterclaim rule.

IV. The court properly exercised its discretion by granting a protective order to the District.

V. The District properly assessed Plaintiff's property and certified it as a lien and Plaintiff did not pay the tax under protest and, accordingly, lacks standing.

VI. The court properly found that Plaintiff's litigation conduct warranted dismissal without prejudice.

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<sup>3</sup> Plaintiff's harassing litigation practices continued even after the issuance of the Order to Show Cause. *See* Record on Appeal.

VII. The court properly found that Plaintiff's litigation conduct warranted dismissal without prejudice.

VIII. The court properly found that Plaintiff's litigation conduct warranted dismissal without prejudice.

IX. The court properly issued its *sua sponte* order to show cause regarding Plaintiff's Rule 11 compliance.

X. The court properly ruled that Plaintiff violated Rule 11.

XI. The court properly found that sanctions were warranted and imposed appropriate sanctions.

XII. The court properly found that Judge Jones should not be disqualified.

XIII. The court properly awarded attorneys' fees to the District pursuant to § 78-27-56.

## **ARGUMENT**

### **I.**

#### **THE COURT PROPERLY EXERCISED ITS DISCRETION IN REDUCING PLAINTIFF'S REQUEST FOR ADMISSIONS FROM 458 TO 50**

Plaintiff erroneously submits that discovery disputes are reviewed for correctness. Rather, such matters are reviewed for abuse of discretion. *Gardner v. Board of County Commissioners of Wasatch County*, 2008 UT 6 ¶ 51, 178 P.3d 893.

While neither Rule 26 nor 36 contain any specific limitation as to the number of Requests for Admissions that a party may propound, Rule 26(b)(3) provides that:

The frequency or extent of use of the discovery methods set forth in Subdivision (a)(6) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative . . . or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on parties' resources, and the importance of the issues in the litigation.

In the present matter, Plaintiff submitted 458 Requests for Admission. The Court, in its sound discretion analogized the 25-interrogatory limit to requests for admission and then doubled it to 50. Given the rather straight forward legal issues at the heart of Plaintiff's Complaint, the Court did not abuse its discretion in limiting Plaintiff's Request for Admissions to 50 pursuant to Rule 26(b)(3).

It should be further noted that the discovery conference required pursuant to Rule 26(f) was never pursued by Plaintiff nor were limitations on discovery ever promulgated pursuant to Rule 26(f)(2)(C).

## **II.**

### **THE COURT PROPERLY DETERMINED THAT FILING A TAX LIEN IS NOT A CIVIL ACTION SUBJECT TO A STATUTE OF LIMITATIONS**

Although Plaintiff's Argument on this Point is less than clear, presumably the Argument heading sets the Argument parameters.

While Plaintiff contends that the certification of unpaid charges as a lien is subject to a statute of limitations, any reference to the relevant statute of

limitations is notably absent. In determining the application of statutes of limitation, a court must examine the relief sought to determine whether a statute of limitation applies. *In re Hoopiiani Trust*, 2006 UT 53 ¶ 27, 144 P.3d 1129. When a party merely requests a court to adjudicate the validity of an opponent’s adverse or hostile claim to property, no statute of limitations applies. *Id.*

In addition, an administrative act is not a “civil action” within the meaning of §§ 78B-2-101 and 102. A “civil action” is commenced (1) by filing a complaint with the court or (2) by service of a summons together with a copy of the complaint in accordance with U.R.C.P. 4. *See* U.R.C.P. 3(a). In this matter, the Court correctly noted that the *filing* of a lien by the District is not a “civil action” within the meaning of the Title 78 statute of limitations sections and Plaintiff’s argument to the contrary fails.

### **III.**

#### **THE COURT CORRECTLY RULED THAT PLAINTIFF’S CLAIMS REGARDING THE 1995 AND 1998 LIENS ARE BARRED BY THE STATUTE OF LIMITATIONS AND THE COMPULSORY COUNTERCLAIM RULE**

Plaintiff’s contention that the Court erred in finding the District’s filing of a lien was not subject to a statute of limitations while his judicial claims were, simple ignores the distinction between the two.

Plaintiff’s claims, unlike Defendants’ lien filing, ask the Court for affirmative relief – to invalidate the 1995 and 1998 liens and for 15 other prayers for relief including no less than 9 prayers for economic damages. On the other

hand, the District's lien filing was simply a ministerial act placing the unpaid charged and assessments on the tax rolls.

Further, Plaintiff's causes of action to challenge such liens arose when the liens were filed. He failed to challenge them until the current litigation commenced in 2006. Although Plaintiff cites to no particular applicable statute of limitations, regardless of which statute of limitations Plaintiff argues as applicable, it had run by the time of the filing of his 2006 Complaint.

In addition, Plaintiff failed, during the pendency of two prior litigations between the parties to ever timely file a counterclaim challenging the liens. Had he done so, even upon dismissal of the District's claims, Plaintiff would have preserved his right to prosecute his claims against the District. *Nu-Med USA v. 4Life, L.C.*, 2008 UT 50 ¶ 15-18, 190 P.3d 1264. Plaintiff's failure to preserve such claims in prior litigation is fatal to his current litigation.

#### **IV.**

#### **THE COURT PROPERLY EXERCISED ITS DISCRETION BY GRANTING A PROTECTIVE ORDER TO THE DISTRICT**

Plaintiff argues that because Defendant allegedly failed to comply with the "meet and confer" provisions of Rule 26(c), the Court's Protective Order is void. Plaintiff fails to advise the Court that in the District Court, Plaintiff argued that "[b]ecause Plaintiff is not a member of the Utah State Bar and is not represented by counsel Plaintiff is not subject to discovery conference pursuant to Utah Rules of Civil Procedure Rule 26(a)(2)(A)(iv)-(d)." *See* Memorandum in Opposition to

Defendant Powder Mountain Water and Sewer Motion for a Protective Order, p. 8.

*See Record on Appeal p. 110.*

Plaintiff did not raise this issue before the trial court and appellate courts are reluctant to consider matters raised for the first time on appeal. *See RJW Media, Inc. v. The CIT Group*, 2008 UT App. 476 ¶ 24, -- P.3d --.

In addition, counsel for the District, informed the Court that:

[They] were cognizant that the rule requires certification that the parties have made a good faith attempt to resolve the dispute prior to seeking court protection. From several years of experience with Mr. Edwards, counsel is fully aware that any such attempt would be futile and would only be met with hostility from Mr. Edwards. Counsel is attaching to this motion a copy of a letter that is sent concurrently to Mr. Edwards and asks the court to consider this correspondence as satisfaction of the meet and confer requirement.

*See Record on Appeal p.79, fn.1.*

The subject letter indicated that Plaintiff's Requests for Admissions were premature and invited Plaintiff to contact counsel and set up a discovery conference. The District also proposed using depositions as a means of discovery rather than 458 Request for Admissions. *See Record on Appeal pp. 72-72.* The Court, in its discretion considered such effort sufficient and appropriately entertained the District Motion for Protective Order.

## **V.**

**THE DISTRICT PROPERLY ASSESSED PLAINTIFF'S PROPERTY AND CERTIFIED IT AS A LIEN AND PLAINTIFF DID NOT PAY THE TAX UNDER PROTEST AND, ACCORDINGLY, LACKS STANDING**

Pursuant to former § 17A-2-301 *et seq.*, the District was organized as a special improvement district under the auspices of Weber County. The District was statutorily authorized to issue bonds and assess charges to all property owners for water and sewer service. In accordance with former § 17A-2-310, *supra*, the District imposed such charge and assessments. Upon nonpayment and certification, such unpaid charges and assessments became a lien on the property “on a parity with and collected at the same time and in the same manner as general county property taxes.” In accordance with § 59-2-1325, the lien for unpaid amounts attaches as of January 1 of each year. A person may challenge such process but *only after* the taxpayer has paid the taxes under protest pursuant to § 59-2-1327:

Where a tax is demanded or enforced by a taxing entity, and the person whose property is taxed claims the tax is unlawful, that person may pay the tax under protest to the county treasurer. *The person may then bring an action in district court against the officer or taxing entity to recover the tax or any portion of the tax paid under protest.*

(Emphasis added.) *See also Woodbury Amsource, Inc. v. Salt Lake*

*County* 2003 UT 28, ¶12, 73 P.3d 362:

Thus, in order for a taxpayer to receive a refund under section 59-2-1321, as interpreted by *Neilson*, the taxpayer must be able to point to a specific double payment, error or illegality that is readily apparent from county records. *If the illegality is in dispute, the taxpayer must first pay under protest before he has standing to challenge the tax in court* under section 59-2-1327.

(Emphasis added.)

Plaintiff admits that he did not pay the tax. *See Plaintiff’s Brief* p. 7:

Appellant has at all times refused to pay Powder Mountain Water and Sewer District and at no time has Appellant paid Powder Mountain Water and Sewer District. Appellant has at all times disputed the amount(s) that Powder Mountain Water and Sewer District claimed due since 1985 and Appellant has claimed that Powder Mountain Water and Sewer District policies are egregious and are illegal under the laws of the State of Utah.

Given Plaintiff's admission that he did not pay the charges under protest, in accordance with § 59-2-1327 and its interpretive case law, Plaintiff lacks standing to bring this action challenging the District's imposition of charges and assessments and the correspondent lien filings. *See Brown v. Division of Water Rights of Dept. of Natural Resources*, 2008 UT App. 353 ¶6, 195 P.3d 933: "Under Utah law, a plaintiff must have standing to invoke the jurisdiction of the court."<sup>4</sup> As a result of Plaintiff's failure to follow the statutory process for challenging the alleged illegality of the imposition and collection of charges and taxes, Plaintiff lacks standing and this Court lacks jurisdiction.

## **VI.**

### **THE COURT PROPERLY FOUND THAT PLAINTIFF'S LITIGATION CONDUCT WARRANTED DISMISSAL WITHOUT PREJUDICE**

The District Court, *sua sponte*, reviewed Plaintiff's Complaint and issued its Order to Show Cause regarding the good faith of Plaintiff's prosecution of that

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<sup>4</sup> Although the district court lacked jurisdiction to hear Plaintiff's Complaint, it did have jurisdiction to issue the Order to Show Cause and award attorneys' fees. *See Western Water v. Olds*, 2008 UT 18 ¶42, 183 P.3d 578: "... even though the district court lacked subject matter jurisdiction over the merits of [plaintiff's complaint] it appropriately awarded costs pursuant to its inherent jurisdiction over its own processes."



Complaint. After an extended presentation by Plaintiff, the Court concluded and found:

3. Plaintiff's 60-page complaint raised 31 causes of action against each of the 20 individual defendants named.

4. The Court finds that there was no factual or legal basis for many of the causes of action in Plaintiff's complaint. Some of these meritless causes of action include: defamation, conspiracy, slander, mail fraud, three counts of RICO violations, and violation of the Hobbs Act.

5. The Court finds that Plaintiff took a claim to remove a lien or challenge a debt certified for collection and aided two dozen thornier causes of action in an effort to get Powder Mountain Water and Sewer's attention. The Court finds that Plaintiff did so in order to harass Powder Mountain Water and Sewer District, the special improvement district responsible for the assessments and collection efforts at issue, as well as its employees and directors.

6. The Court finds that Plaintiff augmented his complaint in order to increase the cost of litigation to the defendants. Plaintiff himself is pro se and incurs no cost, and expends very little personal effort, in drafting additional causes of action and then watching the defendants work to defeat them. On the other hand, the expense of defending against so many meritless claims significantly burdens the defendants.

*See Plaintiff's App. 6.*

Based thereon, the Court dismissed Plaintiff's Complaint *without* prejudice.

It should be further noted that the Court has previously entered partial summary judgment on the validity of the District's lien filings, which actions constituted the foundation for virtually every other claim. *See Plaintiff's App. 2 and Complaint.*

In reviewing the dismissal, this Court considers that the District Court made a finding that the Plaintiff's behavior merited the sanction. *Kilpatrick v. Bullough*

*Abatement*, 2008 UT 82 ¶ 23, -- P.3d --. Such finding will only be disturbed if an abuse of discretion is “clearly” shown. *Id.*

Plaintiff has made no such clear showing regarding the court’s alleged abuse of discretion and, in fact, a review of his pleadings in this matter show a clear and consistent abuse of the judicial system creating harassment and intentionally increasing the cost of litigation. *See* Statement of Facts, *supra*. The District Court’s discretion was appropriate.

## VII.

### **THE COURT PROPERLY FOUND THAT PLAINTIFF’S LITIGATION CONDUCT WAS HARASSING AND WARRANTED DISMISSAL WITHOUT PREJUDICE**

Plaintiff’s argument herein is but a subset of Point VI and leads to a similar result. Plaintiff’s Argument appears to be based upon the allegations set forth in the Court’s Order to Show Cause – not the actual findings entered after the hearing on the Order to Show Cause. It was this allegation, and others, that Plaintiff was called upon to explain in the Order to Show Cause. After being given ample opportunity to provide justification for such alleged conduct, the court found that he had failed to offer a satisfactory justification and entered its Order dismissing the action, without prejudice. The court did not err in its findings and decision.

Further, Defendant’s argument he was “harassed” is raised herein for the first time in spite of Plaintiff’s Complaint containing no less than 31 Causes of Action and 489 paragraphs. The District Court’s dismissal was within its sound discretion. *See* VI, *supra*.

## VIII.

### **THE COURT PROPERLY FOUND THAT PLAINTIFF'S LITIGATION PRACTICE OF "AUGMENTING" HIS PLEADINGS TO INCREASE THE COST OF LITIGATION WARRANTED DISMISSAL WITHOUT PREJUDICE**

Plaintiff's argument herein is a second subset to his Point VI. This Court need look no further than Plaintiff's App. 9, 10, 11, 12 and 13 to see Plaintiff's style of "augmentation" relied upon by the Court. Rather than filing one Motion for Summary Judgment, Plaintiff filed no less than five Motions for Summary Judgment with corresponding Memoranda each with virtually the same statement of facts. In addition, Plaintiff filed his own Affidavits in each of such matters. Plaintiff has tried mightily, and succeeded, in taking a straight forward legal issue and turning it into a litigation morass. The District Court rightly dismissed Plaintiff's Complaint.<sup>5</sup>

## IX.

### **THE COURT PROPERLY ISSUED ITS *SUA SPONTE* ORDER TO SHOW CAUSE REGARDING PLAINTIFF'S RULE 11 COMPLAINT**

The Court had before it, not only Plaintiff's Complaint but the almost 40 pleadings directed at the District and filed between May and November, 2006. Based thereon, the court certainly had personal knowledge of the scope and breadth of and burden imposed upon the District by Plaintiff's pleadings and his conduct in this litigation. Such matters are sufficiently obvious in their intent to

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<sup>5</sup> Inasmuch as the Complaint was dismissed without prejudice, nothing prevented Plaintiff from refiling a focused Complaint narrowly tailored to any remaining issues.

harass the District and greatly increase the cost of defense. The District Court's decision to dismiss was supported by the facts before him.

**X.**

**THE COURT PROPERLY RULED THAT PLAINTIFF VIOLATED  
RULE 11**

The District Court had the unfortunate advantage of a Complaint containing 489 numbered allegations. Having such a considerable insight into the specifics of Plaintiff's claims allowed the Court to make a finding that such claims were not supported by such allegations. In addition to the Complaint, the Court had the advantage of reviewing no less than 37 of Plaintiff's Motions, Memoranda and Affidavits prior to issuing its Order to Show Cause. The Court was well advised in its decision.

**XI.**

**THE COURT PROPERLY FOUND THAT SANCTIONS WERE  
WARRANTED AND IMPOSED APPROPRIATE SANCTIONS**

Plaintiff parses the language of Rule 11 to conclude that the District Court erred by imposing two distinct sanctions. Such contention, however, ignores that Rule 11 gives trial courts great leeway to tailor the sanction to fit the requirements of the particular case." *R & R Energies v. Mother Earth Industries*, 236 P.2d 1080 (Utah 1997).<sup>6</sup>

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<sup>6</sup> In *R & R*, the Supreme Court further noted that sanctions are appropriate when litigation is conducted in a manner that harasses or needlessly increases the cost of litigation. *Id.*

The imposition of a fine alone would have done nothing to relieve the District from the duty to defend the Complaint. The dismissal of the case, without prejudice, taken by itself, would have done nothing to punish Plaintiff for his conduct and keep him from similar conduct in the future. The District Court's sanctions were appropriately tailored given the facts before it.

## **XII.**

### **THE COURT PROPERLY FOUND THAT JUDGE JONES SHOULD NOT BE DISQUALIFIED**

Plaintiff's argument herein is almost wholly based on matters presented for the first time on appeal. The only grounds presented below for disqualification were: (1) Judge Jones made rulings adverse to Plaintiff; and (2) Judge Jones, *sua sponte*, issued an Order to Show Cause to Plaintiff regarding Rule 11. On those grounds, Judge West appropriately denied the Motion to Disqualify. Plaintiff's newly minted claims of bias and prejudice are improperly before this Court.<sup>7</sup>

## **XIII.**

### **THE COURT PROPERLY AWARDED ATTORNEYS' FEES TO THE DISTRICT PURSUANT TO § 78-27-56**

Plaintiff submits that counsel for the District did not timely file their Memorandum regarding attorneys' fees. The District is at a loss to understand the basis for Plaintiff's argument. Accordingly to the Court's Order, counsel for the District were to file their Memoranda on the limited issue of award of attorney's

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<sup>7</sup> Curiously, Plaintiff contends that because Judge Jones, at one time, served on the Powder Mountain ski patrol, he should be disqualified. Powder Mountain Water and Sewer District does *not* operate the ski resort.

fee when, as here, the Order to Show cause was *sua sponte*. The District's Memorandum was to be filed by the District by June 20, 2007. Steven W. Allred, as counsel for the District, filed such Memorandum on June 20, 2007. *See Record on Appeal* pp. 658-673. On June 27, 2007, Stephen W. Farr filed his concurrence with the June 20, 2007, Memorandum of Mr. Allred. *See Record on Appeal* pp. 673-695. More importantly, however, Plaintiff fails to inform this Court that the Court actually denied the District's request for attorney's fees under Rule 11 but left open the opportunity to file a Motion pursuant to § 78-27-56. *See Record on Appeal* pp.717-719.

Counsel for the District subsequently filed Motions and Memoranda pursuant to § 78-27-56. *See Record on Appeal* pp. 726-731 and 746-747. Thereafter, the Court awarded attorneys' fees finding, *inter alia*, that Plaintiff's complaint was without merit and not brought in good faith. *See Record on Appeal* pp. 773-776 and 779-783. Such award was appropriate in light of the Court's findings.

### **CONCLUSION**

The District's imposition of assessments and charges upon Plaintiff's property and the certification of such unpaid amounts as a lien upon the tax rolls of Weber County were statutorily authorized and valid. Plaintiff's Complaint that such conduct was illegal was not preceded by Plaintiff's compliance with the statutorily mandated condition precedent of payment under protest. Accordingly, Plaintiff does not have standing to pursue this action and the Court is devoid of

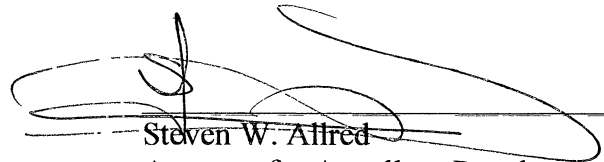
jurisdiction to hear Plaintiff's claims of illegality and his derivative causes of action.

The district court acted appropriately in reducing the number of Plaintiff's Requests for Admissions from 458 to 50. The Court further correctly found that Plaintiff's failure to ever resubmit the 50 authorized Requests demonstrated his intent to use the 458 Requests to increase the burden and costs of litigation.

The district court had a full and adequate comprehension of Plaintiff's litigation tactics and appropriately sanctioned Plaintiff and awarded the District its attorneys' fees.

This Court should dismiss Plaintiff's appeal for lack of jurisdiction, Alternatively, the district court's rulings, orders and judgments at issue herein should be affirmed.

DATED this 30<sup>th</sup> day of January, 2009

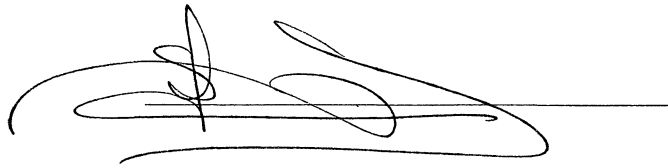
A handwritten signature in black ink, appearing to read "Steven W. Alfred", is written over a horizontal line. The signature is stylized with a large, looping initial "S".

Steven W. Alfred  
Attorney for Appellees Powder  
Mountain Water & Sewer District  
and its Board Members

CERTIFICATE OF SERVICE

I hereby certify that on this 30<sup>th</sup> day of January, 2009, I mailed two true and correct copies of the foregoing Brief, by U.S. mail, postage prepaid, to the following:

Bruce Edwards  
P.O. Box 1886  
Ogden, Utah 84402  
*Attorney Pro Se*

A handwritten signature in black ink, appearing to be "Bruce Edwards", written over a horizontal line. The signature is stylized with loops and a long horizontal stroke at the end.



## ADDENDUM

Bruce Edwards  
Pro Se  
P.O. Box 1886  
Ogden, Utah 84402  
Telephone: 801-603-9094

SECOND JUDICIAL DISTRICT COURT  
2007 MAR 22 PM 2:37

IN THE SECOND JUDICIAL DISTRICT COURT  
OF WEBER COUNTY STATE OF UTAH

BRUCE EDWARDS

Plaintiff,

v.

POWDER MOUNTAIN INC.;  
POWDER MOUNTAIN WATER AND  
SEWER;  
ALVIN COBABE;  
JAMIE LYTHGOE;  
JAMIE LYTHGOE dba POWDER  
MOUNTAIN WATER AND SEWER;  
JUNE COBABE;  
CHUCK PANTER;  
JOANN PANTER;  
SUSAN LOWTHER;  
LAVAR LOWTHER;  
RAY W. MOSS;  
MERLIN J. TOMLINSON;  
ELERY VOGEL;  
CLAIR VAN MEETERREN;  
WAYNE STOKES;  
KIM REMMASH; J  
ULIE BATCHELOR;  
POWDER MOUNTAIN WEST  
LANDOWNERS ASSOCIATION;  
GARY L. JACOBS;  
GORDON JAMES; &  
JOHN DOES 1-25.

Defendants

MAR 22 2006

COMPLAINT

Case No. 060901535 PR

Judge *Yonka*

~~(JURY DEMANDED)~~

Complaint No Amount



VD18929090  
060901535 POWDER MOUNTAIN INC

Plaintiff, Pro Se, complains of Defendant(s) and alleges as follows:

## **JURISDICTION AND VENUE**

1. This Court has jurisdiction. Venue properly lies in this district and division, where the events underlying the Plaintiff's claims took place, in Weber County, State of Utah and where the Defendant's Powder Mountain Water and Sewer, Powder Mountain, Inc., and Powder Mountain West Landowner's Association principal place of business is located.
2. Each defendant resides, maintains an office, transacts business, or is found within the District of Utah, or transacts business within Utah, committed a tortuous act in Utah causing injury to Plaintiff within the state.

## **PARTIES**

1. Plaintiff Bruce Edwards is an adult citizen of the United States of America and resident of South Ogden City, Weber County, Utah. Plaintiff is owner of the real property located at 6847 E. 6725 N. Aspen Drive, Eden, Utah aka Lot 1, Powder Mountain West Subdivision, Phase, #1, Weber County, Utah, Tax I. D. 23-085-0001.
2. Defendants Alvin Cobabe, Chuck Panter, Joann Panter, Susan Lowther, Lavar Lowther, Jamie Lythgoe, June Cobabe, Merlin J. Tomlinon, Elery Voge, Clair Van Meeterren, Wayne Stokes, Kim Remmash, Julie Batchelor and Ray W. Moss upon information and belief are residents of Weber County.
3. That upon information and belief Powder Mountain Water and Sewer is a Special Improvement District created by Weber County.
4. Defendants Alvin Cobabe, Chuck Panter, Joann Panter, Susan Lowther, Lavar Lowther, Jamie Lythgoe, June Cobabe, Merlin J. Tomlinon, Elery Voge, Clair Van Meeterren, Wayne Stokes, Kim Remmash, Julie Batchelor and Ray W. Moss are and or

were directors of Powder Mountain Water and Sewer.

5. That upon information and belief Powder Mountain, Inc. is a Utah Corporation in good standing.

6. That upon information and belief Powder Mountain West Landowner's Association is a Utah Corporation in good standing.

7. That Gordon James is a resident of Weber County and the accountant for Powder Mountain Water and Sewer.

8. That Gary L. Jacobs is a resident of Weber County and agent for Powder Mountain West Landowners Association.

9. Defendant JOHN DOES 1-25, in addition to the Defendants named herein, Plaintiff intends to join as additional Defendants employees, agents, corporate officials and board members of Powder Mountain Water and Sewer District, Powder Mountain Inc. and Powder Mountain West Landowners Association, acting in concert with the named Defendants. These persons whose names are now unknown will be joined herein as parties once their actual identities are revealed to Plaintiff in the course of comprehensive discovery and investigation with their respective causes of action. Plaintiff reserves the right to amend this Complaint from time to time to join these Defendants as they are discovered. Any and all identifiable individuals, through discovery or otherwise, are sued in their individual and official capacities.

10. These unknown Defendants are referred to as "John Does 1-25."

#### FACTUAL BACKGROUND

11. That on or about June 1, 1979, Powder Mountain Inc., as sellers, entered into a Uniform Real Estate Contract with Harry Schmalz and Glenn Paysar, as buyers, selling

all right title and interest in all of Lot 1, Powder Mountain West Subdivision, Phase, #1, in Weber County Utah according to the official plat thereof, Property Tax I. D. 23-085-0001 located in Weber County state of Utah.

12. Harry Schmalz and Glenn Paysar assigned all right title and interest on April 1, 1981, in and to the Uniform Real Estate Contract dated June 1, 1979, with Powder Mountain Inc. to Bruce Edwards.

13. That Plaintiff has made each and every payment pursuant to the terms of the Uniform Real Estate Contract dated June 1, 1979.

14. That Plaintiff provided a copy of the assignment of the Real Estate Contract dated June 1, 1979, to Defendant Powder Mountain Inc..

15. That Plaintiff has fulfilled the terms and conditions of the Uniform Real Estate Contract with Powder Mountain Inc..

16. That Powder Mountain Inc. has failed and or refused to provide Plaintiff with a deed transferring Powder Mountain Inc.'s interest in the at subject property to Plaintiff.

17. That Plaintiff's property has at all times been an unimproved lot.

18. That on or about December 1987, Plaintiff notified Powder Mountain Water and Sewer District that Powder Mountain Water and Sewer District policies were in violation of Utah Code.

19. That on or about October 22, 1998, Powder Mountain Water and Sewer District filed suit against Plaintiff in the Second Judicial District Court case number 980907203.

20. Powder Mountain Water and Sewer District alleged in the complaint that Plaintiff's "obligation to the Water and Sewer District through October 1, 1998, is in the amount of \$36,209.75".

21. That “Bruce Edwards Schedule of Accounts Receivable at Powder Mountain Water and Sewer at December 15, 1999” claims that Plaintiff’s balance to Powder Mountain Water and Sewer on October 1, 1998 was \$19,057.45.
22. That Defendant Powder Mountain Water and Sewer District filed a Notice of Lis Pendens on or about November 8, 1999, against Plaintiff’s property.
23. That on or about August 3, 2000, Defendant Powder Mountain Water and Sewer District dismissed Powder Mountain Water and Sewer District’s claim filed against Plaintiff in the Second Judicial District Court case number 980907203.
24. That on or about March 1, 2000, Powder Mountain Water and Sewer District filed suit against Plaintiff in the Second Judicial District Court case number 000901605.
25. That Powder Mountain Water and Sewer District alleged that Plaintiff owed Powder Mountain Water and Sewer District \$48,456.82 plus attorney fees and costs for water and sewer in case number 000901605.
26. That on December 15, 1999, Powder Mountain Water and Sewer District offered Plaintiff a season pass to Powder Mountain if Plaintiff would quit claim Plaintiff’s property to Powder Mountain Water and Sewer District.
27. That Defendant Powder Mountain Water and Sewer District moved to dismiss case number 000901605 in the Second Judicial District Court on or about July, 2001.
28. That case number 000901605 in the Second Judicial District Court was dismissed with prejudice on or about July 23, 2001.
29. That Plaintiff has had to defend Plaintiff’s interest in Plaintiff’s property by retaining an attorney in both actions against Plaintiff by Powder Mountain Water and Sewer District.

30. That Ray Moss is and or was Chairman of the Board of Trustees for Powder Mountain Water and Sewer District.
31. That Chuck Panter is and or was the Treasurer of Powder Mountain Water and Sewer District.
32. That on May 15, 2002, Powder Mountain Water and Sewer District through Chuck Panter, Treasurer Powder Mountain Water and Sewer District, “certified for collection” water and sewer assessments to Margarit Nersisian, of the Weber County Clerk Auditor’s Office.
33. That on May 31, 2002, the Weber County Clerk Auditor’s Office added Powder Mountain Water and Sewer District’s assessment on Plaintiff’s property in the amount of \$24,120.10 as a property tax to Plaintiff’s property.
34. That the amount “certified” by Powder Mountain Water and Sewer District on May 31, 2002, included charges dating back to July 7, 1985.
35. That the amount alleged due as of February 3, 2006, by Powder Mountain Water and Sewer District, for the tax lien filed by Powder Mountain Water and Sewer District on May 31, 2002 was \$29,404.93 which includes a \$482.80 penalty and \$4,802.03 in interest pursuant to the Treasurer of Weber County.
36. The letter of Chuck Panter, Treasurer of Powder Mountain Water and Sewer District, on May 15, 2002, states “which will show that Mr. Edwards hasn’t paid a dime towards his water and sewer since he purchased the property in the late 1970’s”.
37. That when Plaintiff purchased the at subject property the subject property included a water hookup.
38. That when Plaintiff purchased the at subject property the subject property’s sewer

would have to have been from the installation of a septic tank.

39. That prior to Powder Mountain Water and Sewer District installation of the sewer system Plaintiff obtained a permit from Weber County to install a septic tank.

40. That Powder Mountain Water and Sewer District's 1985 "Sewer Fees and Assessment" states that "Lots already connected to the system will not be required to pay this up grade fee as they come under the grandfather use clause".

41. That the "Sewer Fees and Assessment 1985" agreement was in violation of Utah Code.

42. That the July 1985, "Water Fee Schedule and Agreement" was in violation of Utah Code.

43. That the "Water Fee Schedule and Agreement July 1985", states that "10 – If not activated all agreements will be terminated as specified above".

44. That upon information and belief, Plaintiff has no independent recollection that Plaintiff activated the July 1985, agreement with Powder Mountain Water and Sewer.

45. That on February 8, 1995, Defendant Jamie Lythgoe, doing business as Powder Mountain Water and Sewer, filed a notice of lien with the Weber County Recorder in the amount of \$20,685.00 for unpaid water and sewer fees.

46. That pursuant to Powder Mountain Water and Sewer "Schedule of account Receivable" for Plaintiff dated December 15, 1999, Powder Mountain Water and Sewer District alleged that Plaintiff owed Defendant Powder Mountain Water and Sewer District \$12,827.62 as of January 2, 1995.

47. That on April 27, 1998, Defendant Ray W. Moss, who duly sworn statement stated he is (the lienor herein) (the agent of the lienor herein) of Powder Mountain Water and



Sewer District, filed a notice of lien with the Weber County Recorder in the amount of \$32,226.00 for water and sewer hookups and lot improvements.

48. That pursuant to Powder Mountain Water and Sewer “Schedule of account Receivable” for Plaintiff dated December 15, 1999, Powder Mountain Water and Sewer District alleges that Plaintiff owed Defendant Powder Mountain Water and Sewer District \$17,646.02 on January 2, 1998.

49. That Defendant Powder Mountain Water and Sewer District has never provided Plaintiff with any itemized statement of any lot improvements.

50. That Defendant Powder Mountain Water and Sewer District has made no improvements that enter or touch upon Plaintiff’s land.

51. That on June 14, 1989, Defendant Powder Mountain Water and Sewer District terminated Plaintiff’s “connection rights” to water and sewer as of July 1, 1989.

52. That Defendant Powder Mountain Water and Sewer District continued to charge Plaintiff for water and sewer including late fees up to March 31, 1990.

53. That Defendant Gordon James, the Certified Public Accountant for Defendant Powder Mountain Water and Sewer District, claimed that Plaintiff owed Powder Mountain Water and Sewer District \$51,364.22 as of June 26, 2000.

54. That it is and or was Powder Mountain Water and Sewer District’s policy pursuant to Powder Mountain Water and Sewer District’s “Additional Fees Late Charges, Interest and Delinquent Accounts” to charge “1.) Late fee \$5.00 per month”.

55. That it is and or was Powder Mountain Water and Sewer District’s policy pursuant to Powder Mountain Water and Sewer District’s “Additional Fees Late Charges, Interest and Delinquent Accounts” to charge “2.) Interest on delinquent accounts 2% per month

on unpaid balance”.

56. That it is and or was Powder Mountain Water and Sewer District’s policy pursuant to Powder Mountain Water and Sewer District’s “Additional Fees Late Charges, Interest and Delinquent Accounts” “3.) Billing is on a quarterly basis, beginning January 1, of each year. Bills will be sent out by the 10<sup>th</sup> day of the first month of each quarter. Payment is due 30 days after billing”.

57. That it is and or was Powder Mountain Water and Sewer District’s policy pursuant to Powder Mountain Water and Sewer District’s “Additional Fees Late Charges, Interest and Delinquent Accounts” to charge “4.) Late charges will apply and interest will start if bill has not been paid by the due date, and will apply from the beginning day of the quarter until paid. A \$5.00 billing charge will be charged for each additional late notice that is required.”

58. That it is and or was Powder Mountain Water and Sewer District’s policy pursuant to Powder Mountain Water and Sewer District’s “Additional Fees Late Charges, Interest and Delinquent Accounts” to “5.) If the bill has not been paid by the end of the quarter a registered notice will be sent notifying you that your account and water services will be terminated”.

59. That it is and or was Powder Mountain Water and Sewer District’s policy pursuant to Powder Mountain Water and Sewer District’s “Additional Fees Late Charges, Interest and Delinquent Accounts” to charge “6.) A thirty day grace period will be given following this notification during which time default may be corrected by paying all the back fees plus a \$100.00 fee for reinstatement of services. This charge is for each equivalent unit and not per meter”.

60. That it is and or was Powder Mountain Water and Sewer District's policy pursuant to Powder Mountain Water and Sewer District's "Additional Fees Late Charges, Interest and Delinquent Accounts" to charge "7.) Following the above termination and the expiration of the allotted time it will be necessary to make a new application for service and pay the new connection fees that being charged at that time".

61. That it is and or was Powder Mountain Water and Sewer District's policy pursuant to Powder Mountain Water and Sewer District's "Additional Fees Late Charges, Interest and Delinquent Accounts" to charge "8.) If payment still has not been made for services rendered, a lien may be placed on the properties, with lien costs added to the amount due".

62. That it is and or was Powder Mountain Water and Sewer District's policy pursuant to Powder Mountain Water and Sewer District's "Additional Fees Late Charges, Interest and Delinquent Accounts" to charge "9.) If payment still has not been made for services rendered, late fees, interest and other penalties, a foreclosure action will be taken on the properties to recover amounts due".

63. That as of June 1, 2005, the connection fee for water at Powder Mountain Water and Sewer District was \$5,000.00.

64. That as of June 1, 2005, the connection fee for sewer at Powder Mountain Water and Sewer District was \$6,500.00.

65. That as of June 1, 2005, the monthly sewer fee for non connected lots at Powder Mountain Water and Sewer District was \$29.50.

66. That as of June 1, 2005, the monthly sewer fee for non connected lots at the lower Powder Mountain Water and Sewer District was \$17.00.

67. That as of June 1, 2005, the monthly sewer fee for connected lots at Powder Mountain Water and Sewer District was \$34.00.
68. That as of June 1, 2005, the monthly sewer fee for connected lots at the lower Powder Mountain Water and Sewer District was \$24.50.
69. That as of June 1, 2005, the monthly service fee for water non connected residential at Powder Mountain Water and Sewer District was \$19.50 per month.
70. That as of June 1, 2005, the monthly service fee for water connected residential at Powder Mountain Water and Sewer District was \$29.50 per month.
71. That at the board meeting of Powder Mountain Water and Sewer District, on May 4, 1988, the board stated “The board felt that the any further action at this time was not necessary because we are not furnishing any water or sewer service at present time but to let them [Delinquent members] reapply when the connections are needed at the going rate”.
72. That Utah does not recognize a sewer stub as an improvement for the purpose of Utah Code 38-1.
73. That Utah does not recognize water stub as an improvement for the purpose of Utah Code 38-1.
74. That Utah does not recognize the monthly water usage for the purpose of Utah Code 38-1.
75. That Utah does not recognize the monthly sewer usage for the purpose of Utah Code 38-1.
76. That Powder Mountain Water and Sewer District was never entitled to the interest rate charged of 2% per month under Utah Code.

77. That defendant Powder Mountain Water and Sewer District failed to record the February 8, 1995, lien in the amount of \$20,685.00 within 90 days of the last material or service rendered.

78. That defendant Powder Mountain Water and Sewer District failed to record the April 27, 1998, lien in the amount of \$32,226.00 within 90 days of the last material or service rendered.

79. That defendant Powder Mountain Water and Sewer District failed to commence foreclosure on the lien recorded on February 8, 1995, for unpaid water and sewer fees in the amount of \$20,685.00 within 12 months.

80. On March 7, 2001, David J. Knowlton, acting as Plaintiff's attorney sent notice to Ms. Catherine S. Conklin, attorney for Powder Mountain Water and Sewer District, pursuant to Utah Code 38-1-24 stating that "Demand is hereby made on behalf of the defendant [Bruce Edwards] that plaintiffs [Powder Mountain Water and Sewer District] cancel both liens within the next ten days".

81. On March 7, 2001, David J. Knowlton, acting as Plaintiff's attorney sent notice to Ms. Catherine S. Conklin, attorney for Powder Mountain Water and Sewer District, pursuant to Utah Code 38-1-24 stating that "Failure to cancel such a lien could subject plaintiff [Powder Mountain Water and Sewer District] to a penalty of \$20.00 per day."

82. On March 7, 2001, David J. Knowlton, acting as Plaintiff's attorney [Bruce Edwards] sent notice to Ms. Catherine S. Conklin, attorney for Powder Mountain Water and Sewer District, pursuant to Utah Code 38-1-24 stating that "In addition to the daily penalty, defendant [Bruce Edwards] will seek attorney fees and costs herein."

83. David J. Knowlton's notice of March 7, 2001, in addition states "Further demand is

hereby made on behalf of the defendants [Bruce Edwards] under Utah Code 38-9-42) that the plaintiff [Powder Mountain Water and Sewer District] cancel these liens from the public record within 20 days of this demand. Upon plaintiff's [Powder Mountain Water and Sewer District] failure, defendant [Bruce Edwards] will seek the statutory remedy of actual damages, \$1,000.00/3,000.00 and/or treble damages along with attorney fees and costs.

84. That Powder Mountain Water and Sewer District failed to cancel the lien filed on February 8, 1995, by Defendant Jamie Lythgoe.

85. That Powder Mountain Water and Sewer District failed to cancel the lien filed on April 27, 1998, by Defendant Ray W. Moss.

86. Defendant Powder Mountain Water and Sewer District lien filed on February 8, 1995, was not expressly authorized by Title 38 of the Utah Code.

87. Defendant Powder Mountain Water and Sewer District lien filed on February 8, 1995, was not expressly authorized by any other statute of the State of Utah.

88. Defendant Powder Mountain Water and Sewer District lien filed on February 8, 1995, was not expressly authorized by any federal statute.

89. Defendant Powder Mountain Water and Sewer District lien filed on February 8, 1995, was not authorized by or contained in an order or judgment of a court of competent jurisdiction in the state.

90. Defendant Powder Mountain Water and Sewer District lien filed on February 8, 1995, was not signed by or authorized pursuant to a document signed by Plaintiff, the owner of the real property.

91. Defendant Powder Mountain Water and Sewer District lien filed on April 27, 1998,

was not expressly authorized by Title 38 of the Utah Code.

92. Defendant Powder Mountain Water and Sewer District lien filed on April 27, 1998, was not expressly authorized by any other statute of the State of Utah.

93. Defendant Powder Mountain Water and Sewer District lien filed on April 27, 1998, was not expressly authorized by any federal statute.

94. Defendant Powder Mountain Water and Sewer District lien filed on April 27, 1998, was not authorized by or contained in an order or judgment of a court of competent jurisdiction in the state.

95. Defendant Powder Mountain Water and Sewer District lien filed on April 27, 1998, was not signed by or authorized pursuant to a document signed by Plaintiff, the owner of the real property.

96. Defendant Powder Mountain Water and Sewer District lien filed on May 31, 2002, was not expressly authorized by this chapter or another state or federal statute.

97. Defendant Powder Mountain Water and Sewer District lien filed on May 31, 2002, was not authorized by or contained in an order or judgment of a court of competent jurisdiction in the state.

98. Defendant Powder Mountain Water and Sewer District lien filed on May 31, 2002, was not signed by or authorized pursuant to a document signed by Plaintiff, the owner of the real property.

99. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on February 8, 1995, was filed in Bad Faith.

100. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on April 27, 1998, was filed in Bad Faith.

101. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on May 31, 2002, was filed in Bad Faith.
102. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on February 8, 1995, was a wrongful lien.
103. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on February 8, 1995, was groundless.
104. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on February 8, 1995, contained a material misstatement or false claim.
105. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on April 27, 1998, was a wrongful lien.
106. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on April 27, 1998, was groundless.
107. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on April 27, 1998, contained a material misstatement or false claim.
108. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on May 31, 2002, was a wrongful lien.
109. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on May 31, 2002, was groundless.
110. That Defendant Powder Mountain Water and Sewer District knew or should have known that the lien filed on May 31, 2002, contained a material misstatement or false claim.



111. Defendant Powder Mountain Water and Sewer District filed the lien on May 31, 2002, after Defendant Powder Mountain Water and Sewer District had filed two civil suits against Plaintiff and dismissed each civil action.
112. That the lien filed on February 8, 1995, was initiated against Plaintiff in order to gain advantage over Plaintiff.
113. That the lien filed on April 27, 1998, was initiated against Plaintiff in order to gain advantage over Plaintiff.
114. That the lien filed on May 31, 2002, was initiated against Plaintiff in order to gain advantage over Plaintiff.
115. That the lien filed on February 8, 1995, was initiated against Plaintiff in order to deprive Plaintiff of Plaintiff rights and or property rights.
116. That the lien filed on April 27, 1998, was initiated against Plaintiff in order to deprive Plaintiff of Plaintiff rights and or property rights.
117. That the lien filed on May 31, 2002, was initiated against Plaintiff in order to deprive Plaintiff of Plaintiff rights and or property rights.
118. Defendant Powder Mountain Water and Sewer District knew that Plaintiff contested the amount Powder Mountain Water and Sewer District claimed due on May 31, 2002, in the amount of \$24,120.10.
119. Defendant Powder Mountain Water and Sewer District knew or should have known that the Statute of Limitations applied to the amount Defendant Powder Mountain Water and Sewer District claimed due.
120. That Plaintiff raised as an affirmative defense in the action that Defendant Powder Mountain Water and Sewer District filed against Plaintiff that the amount Defendant

Powder Mountain Water and Sewer District claimed due was barred by the Statute of Limitations.

121. Defendant Powder Mountain Water and Sewer District knew or should have known that the May 31, 2002, lien included charges that Powder Mountain Water and Sewer District is not legally entitled to.

122. Defendant Powder Mountain Water and Sewer District knew or should have known that the May 31, 2002, lien constituted fraud on the court.

123. Defendant Powder Mountain Water and Sewer District knew or should have known that the May 31, 2002, lien constituted fraud on Plaintiff.

124. Defendant Powder Mountain Water and Sewer District knew or should have known that the May 31, 2002, lien would restrict and or cloud the title of Plaintiff's property.

125. That it was the intent of Defendant Powder Mountain Water and Sewer District to have Weber County sell Plaintiff's property at tax sale if Plaintiff failed to pay the amount Defendant Powder Mountain Water and Sewer District alleged due.

126. Plaintiff has not been able to use Plaintiff's property for the purpose(s) that Plaintiff intended because of Defendant Powder Mountain Water and Sewer District unlawful lien(s).

127. Plaintiff has been damaged by Defendant Powder Mountain Water and Sewer District's intentional misrepresentation(s) to Weber County.

128. That Defendant Powder Mountain Inc. valued Plaintiff's water connection at \$8,000.00 when Plaintiff purchased Plaintiff's property.

129. That Plaintiff has fully paid Defendant Powder Mountain Inc. for the water connection valued by Defendant Powder Mountain Inc. at \$8,000.00.

130. That it is or became Defendant Powder Mountain Inc. and or Defendant Powder Mountain Water and Sewer District's policy on July 1985 that "If your bill becomes over (90) days delinquent you will forfeit your connection ownership and when you wish to make a connection you will have to reapply."

131. That Defendant Mountain Inc. has converted Plaintiff's water connection valued by Powder Mountain Inc. at \$8,000.00 to Defendant Powder Mountain Inc.'s benefit.

132. That Plaintiff has not authorized Defendant Powder Mountain Inc. to terminate Plaintiff's interest in the water connection valued by Defendant Powder Mountain Inc. at \$8,000.00.

133. That Defendant Powder Mountain Inc. has been unjustly enriched by the unilateral forfeiture of Plaintiff's water connection.

134. That pursuant to Defendant Powder Mountain Water and Sewer Statement dated September 30, 2005, Defendant Powder Mountain Water and Sewer District alleges the Balance due Defendant Powder Mountain Water and Sewer District was \$51,364.22.

135. That pursuant to Defendant Powder Mountain Water and Sewer Statement dated September 30, 2005, Defendant Powder Mountain Water and Sewer District charges 1.5% interest on delinquent balances.

136. That as of September 30, 2005, for Plaintiff to obtain a water and sewer connection Plaintiff would be required to pay Defendant Powder Mountain Water and Sewer District \$62,864.22.

137. That the water and sewer connection fees required by other unimproved lots developed or being developed at Powder Mountain as of September 30, 2005, are not required to pay \$62,864.22.

138. That on February 3, 2005, Defendant Gary L. Jacobs, duly sworn, stated he is of Powder Mountain West Landowner's Association, filed a claim of lien with the Weber County Recorder in the amount of \$2,158.99 for labor, services, or materials consisting of Homeowner Association Provided Services on Plaintiff's real property.

139. Defendant Powder Mountain West Landowner's Association claim of lien states "furnished the first of the items on November 23, 1999, and the last of the items on December 12, 2004".

140. That Defendant Powder Mountain West Landowner's Association has made no improvements that enter or touch upon Plaintiff's land.

141. That Defendant Powder Mountain West Landowner's Association annual statement dated December 16, 2005, states the balance due on December 12, 2004/2005, was \$2,158.99.

142. That Defendant Powder Mountain West Landowner's Association annual statement dated December 16, 2005 stated Plaintiff's 1994 Unpaid Balance was \$297.62.

143. That Defendant Powder Mountain West Landowners Association's annual statement dated December 16, 2005, that stated that Plaintiff's 1994 Unpaid Balance was \$297.62 included fees back to and including 1985.

144. Defendant Powder Mountain West Landowner's Association claim of lien recorded on or about February 3, 2005, states "and that in accordance with a contract with Bruce Edwards..."

145. That Plaintiff upon information and belief has not entered into any written and or oral agreement with Defendant Powder Mountain West Landowner's Association.

146. That Defendant Powder Mountain West Landowner's Association claim is limited

by the statute of limitations.

147. That Defendant Powder Mountain West Landowners Association is entitled to no more than 4 years of past dues.

148. That Defendant Powder Mountain West Landowner's Association was dissolved January 1, 1997, by the State of Utah for failure to submit annual reports.

149. Defendant Powder Mountain West Landowner's Association filed for and was granted corporate status in July 1998.

150. That Defendant Powder Mountain West Landowner's Association knew or should have known that the lien filed on February 3, 2005, contained a material misstatement or false claim.

151. That Defendant Powder Mountain West Landowner's Association knew or should have known that the lien filed on February 3, 2005, was a wrongful lien.

152. That Defendant Powder Mountain West Landowner's Association knew or should have known that the lien filed on February 3, 2005, was groundless.

153. Defendant Powder Mountain West Landowner's Association lien filed on February 3, 2005, was not expressly authorized by Title 38.

154. Defendant Powder Mountain West Landowner's Association lien filed on February 3, 2005, was not expressly authorized by another state or federal statute.

155. Defendant Powder Mountain West Landowner's Association lien filed on February 3, 2005, was not authorized by or contained in an order or judgment of a court of competent jurisdiction in the state.

156. Defendant Powder Mountain West Landowner's Association lien filed on February 3, 2005, was not signed by or authorized pursuant to a document signed by Plaintiff, the

owner of the real property.

157. That the lien filed on February 3, 2005, was initiated against Plaintiff in order to gain advantage over Plaintiff.

158. That the lien filed on February 3, 2005, was initiated against Plaintiff in order to deprive Plaintiff of Plaintiff rights and or property rights.

159. On February 14, 2006, Plaintiff sent Defendant Powder Mountain West Landowner's Association, pursuant to Utah Code 38-1-24 a letter stating that "Demand is hereby made that you cancel your lien with in the next ten days".

160. On February 14, 2006, March 7, 2001, Plaintiff sent Defendant Powder Mountain West Landowner's Association, pursuant to Utah Code 38-1-24 a letter stating that "Failure to cancel such a lien could subject you to a penalty of \$20.00 per day."

161. On February 14, 2006, Plaintiff sent notice to Defendant Powder Mountain West Landowner's Association, pursuant to Utah Code 38-1-24 letter stating that "In addition to the daily penalty, I will seek attorney fees and costs herein."

162. On February 14, 2006, Plaintiff's notice in addition states "Further demand is hereby made under Utah Code 38-9-4(2) that Defendant Powder Mountain West Landowner's Association cancel these liens from the public record within 20 days of this demand. Upon Powder Mountain West Landowner's Association failure, I will seek the statutory remedy of actual damages, \$1,000.00/3,000.00 and/or treble damages along with attorney fees and costs".

163. That Powder Mountain West Landowner's Association has failed to cancel the lien filed on February 3, 2005.

164. That Defendant Powder Mountain Water and Sewer District "liens" are barred by

the Statute of Frauds.

165. That Defendant Powder Mountain West Landowners Association lien is barred by the Statute of Frauds

166. That Defendant Powder Mountain West Landowner's Association lien is barred by a failure of lawful consideration.

167. That Defendant Powder Mountain Water and Sewer District liens are barred by a failure of lawful consideration.

168. That Powder Mountain West Landowner's Association lien is barred by waiver, laches, and/or estoppel.

169. That Defendant Powder Mountain Water and Sewer District "liens" are barred by waiver, laches, and/or estoppel.

170. Defendants intentionally and deliberately inflicted emotional distress on Plaintiff by Defendants conspiring against Plaintiff.

171. Defendants intentionally and deliberately inflicted emotional distress on Plaintiff by Defendant's unlawful acts against Plaintiff and Plaintiff's property.

172. Defendants knew or should have known that emotional distress was the likely result of Defendant's conduct.

173. Defendants' activities amount to an intentional infliction of emotional injury.

174. Defendants' unlawful conduct was extreme and outrageous.

175. As a result of Defendants extreme and outrageous conduct, Plaintiff, has and will continue to be emotionally distressed due to the intentional commission of Defendants unlawful acts against Plaintiff and Plaintiff's property.

176. That upon information and belief, Defendants acted willfully or with such gross negligence as to indicate a wanton disregard of Plaintiff's property rights and the rights of others.

177. That upon information and belief, Defendants acted willfully, wantonly, egregiously, with reckless abandon and high degree of moral culpability, and with near or actual criminal indifference to the laws of the State of Utah.

178. That upon information and belief, Defendants substantially benefited by Defendants illegal acts.

179. That upon information and belief, Defendants acted in other inappropriate, self-interested ways and should not be allowed to benefit from Defendants misconduct.

180. That upon information and belief, Defendants willful and malicious or intentionally fraudulent conduct, or conduct that manifests a knowing and reckless indifference toward, and disregard of, the rights of Plaintiff and of others is reprehensible.

181. That upon information and belief, Defendants deliberate false statements, acts of affirmative misconduct, was for an improper motive.

182. That upon information and belief, Defendant used trickery and deceit to accomplish Defendants unlawful activities.

183. That upon information and belief, Defendants economic injury to Plaintiff, was accomplished intentionally through affirmative acts of misconduct.

184. That upon information and belief, Defendants have established a pattern of deceit, failure to disclose, misrepresentation and constitutional deprivations.

185. That upon information and belief, Defendants consciously disregarded its obligations to Plaintiff.



186. That upon information and belief, Defendants self-interested actions, were made in the face of known fiduciary obligations and support a substantial punitive damage award.

187. That upon information and belief, Defendants have established a pattern of regular deceit and or other comparable acts of misconduct perpetuated in other dealings with other members of the public.

188. That upon information and belief, the likelihood of future, violations by Defendants are likely.

189. That upon information and belief, Defendants acted willfully or with such gross negligence as to indicate a wanton disregard of Plaintiff's rights and the rights of others.

190. Defendants' unlawful conduct has unreasonably and substantially interfered with Plaintiff's use and enjoyment of Plaintiff's property.

191. That Defendants exercise of rights over Plaintiff's properties and or of some right over or in connection with Plaintiff's properties has damaged Plaintiff.

192. Defendants directly interfered with Plaintiff's quiet enjoyment of Plaintiff's properties.

193. Defendant indirectly interfered with Plaintiff's quiet enjoyment of Plaintiff's property.

194. Defendant Powder Mountain Water and Sewer District civil action filed against Plaintiff on October 22, 1998, against Plaintiff was without merit.

195. Defendant Powder Mountain Water and Sewer District civil action filed against Plaintiff on March 1, 2000, against Plaintiff was without merit.

196. Defendant Powder Mountain Water and Sewer District civil actions against Plaintiff was not brought or asserted in good faith.

197. Defendants had a duty to act in good faith and deal fairly with Plaintiff.
198. Defendants breached Defendants' covenant of good faith and fair dealing.
199. That there was an implied promise of good faith and fair dealing in the contract or agreement between Defendants and Plaintiff.
200. That upon information and belief, Defendants conduct actually or potentially obstructed delayed or affected interstate commerce.
205. That upon information and belief, Defendants knew or should have known that Defendants were not legally entitled to Plaintiff's property.
206. That upon information and belief, Defendants attempted to coerce Plaintiff through the misuse of Defendants offices.
207. That upon information and belief, Defendant used their legitimate governmental powers to obtain an illegitimate objective.
208. That upon information and belief, Defendants represent a group of persons associated together for a common purpose of engaging in a course of conduct constituting an RICO enterprise.
209. That upon information and belief, Defendants engaged in a pattern of racketeering activity through an enterprise that includes more than it itself or its subparts
210. That upon information and belief, Defendants were employed by or associated with the Enterprise.
211. That upon information and belief, Defendants criminal actions have had the same or similar purposes, results, participants, victim and or are otherwise interrelated.
212. That upon information and belief, Defendants managed or operated said Enterprise through a pattern of racketeering activity.

213. That upon information and belief, Defendants have committed the following Rico predicate offenses; mail fraud, wire fraud, obstruction of justice and extortion.

214. That upon information and belief, Defendants mail fraud was in furtherance of Defendants scheme to deprive Plaintiff of Plaintiff's property.

215. That upon information and belief, Defendants and each Defendant agreed and or conspired to pursue the same criminal activity to deprive Plaintiff of Plaintiff's rights and property.

216. That upon information and belief, Defendants have committed two or more criminal acts having sufficient continuity and relationship to constitute a pattern.

217. That upon information and belief, Defendants have engaged in a pattern of criminal activity.

218. That upon information and belief, Defendants have engaged in a pattern of racketeering activity.

219. That upon information and belief, Defendants racketeering activity was the proximate and or direct cause of Plaintiff's injury and or damages.

#### FIRST CAUSE OF ACTION

#### BREACH OF CONTRACT

220. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

221. That Plaintiff is the owner of all right title and interest in all of Lot 1, Powder Mountain West Subdivision, Phase, #1, in Weber County Utah according to the official plat thereof, Property Tax I. D. 23-085-0001 located in Weber County State of Utah.

222. That Defendant Powder Mountain Inc. has failed and or refused to deed the property to Plaintiff pursuant to the terms of the Uniform Real Estate Contract dated June 1, 1979.

223. That Defendant Powder Mountain Inc., Defendant Powder Mountain West Landowner's Association and Defendant Powder Mountain Water and Sewer claim interests adverse to Plaintiff.

224. That Defendants have no right, title or interest to Plaintiff's property.

225. Plaintiff is entitled to decree ordering Defendant Powder Mountain Inc., to transfer all right, title or interest to Plaintiff or Plaintiff's assigns.

226. For judgment against Defendants that Defendants have no right title or interest in Plaintiff's property.

227. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages if any Defendants claim any interest in the at subject property.

228. Plaintiff is entitled to judgment against Defendant Powder Mountain Inc. for breach of contract.

## SECOND CAUSE OF ACTION

### FAILURE TO DEED

229. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

230. That Defendant Powder Mountain Inc. refused to deed the property pursuant to the terms of the Uniform Real Estate Contract dated June 1, 1979 for an improper purpose.

231. That Defendant Powder Mountain Inc.'s malice in refusing to deed the property pursuant to the terms of the Uniform Real Estate Contract dated June 1, 1979 entitles Plaintiff to an award of punitive damages against Defendant Powder Mountain Inc..

232. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

### THIRD CAUSE OF ACTION

#### ABUSE OF LIEN RIGHT

233. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

234. Defendants intentionally recorded lien(s) against Plaintiff's property, which contained a greater demand than the sum due.

235. Defendants intentionally recorded lien(s) against Plaintiff's property, which contained a greater demand than the sum due with the intent to cloud the title of Plaintiff's property.

236. Defendants intentionally recorded lien(s) against Plaintiff's property, which contained a greater demand than the sum due to exact from Plaintiff by means of the excessive claim of lien(s) more than is due.

237. Defendants intentionally recorded lien(s) against Plaintiff's property, which contained a greater demand than the sum due to procure an unjustified advantage or benefit over Plaintiff.

238. Defendants are liable to Plaintiff who is affected by the lien(s) for the greater of: (a) twice the amount by which the wrongful lien(s) exceeds the amount actually due; or (b) the actual damages incurred by Plaintiff.

239. Plaintiff is entitled to judgment against Defendants jointly and severally, for the greater of: (a) twice the amount by which the wrongful lien(s) exceeds the amount actually due; or (b) the actual damages incurred by Plaintiff for each lien that Defendants filed.

240. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### FOURTH CAUSE OF ACTION

##### FILING WRONGFUL LIEN

241. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

242. Defendants recorded or filed or caused to be recorded or filed wrongful lien(s) in the office of the Weber County recorder against Plaintiff's real property, knowing or having reason to know that the document were wrongful lien(s).

243. Defendants recorded or filed or caused to be recorded or filed wrongful lien(s) in the office of the Weber County recorder against Plaintiff's real property, knowing or having reason to know that the document(s) were groundless.

244. Defendants recorded or filed or caused to be recorded or filed wrongful(s) lien in the office of the Weber County recorder against Plaintiff's real property, knowing or having reason to know that the document(s) contained a material misstatement or false claim.

245. Defendants filed or caused wrongful lien(s) as defined in Section 38-9-1 to be recorded or filed in the office of the Weber County Recorder against Plaintiff's real property and are liable to Plaintiff for any actual damages proximately caused by the wrongful lien(s).

246. On March 7, 2001 David J. Knowlton, acting as Plaintiff's attorney sent notice to Ms. Catherine S. Conklin, attorney for Powder Mountain Water and Sewer District, pursuant to Utah Code stating that "Demand is hereby made on behalf of the defendant that plaintiffs cancel both liens within the next 20 days.

247. Defendants failed and or refused to release or correct the wrongful lien(s).

248. Defendants refused to release or correct the wrongful lien within 20 days from the date of written request from Plaintiff, a record interest holder of the real property, and therefore Defendants are liable to Plaintiff for \$1,000.00 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

249. Defendants recorded and or filed and or caused to be recorded or filed a wrongful lien as defined in Utah Code Section 38-9-1 in the office of the Weber County Recorder against Plaintiff's real property, knowing or having reason to know that the document(s): (a) were wrongful lien(s); (b) were groundless; or (c) contained a material misstatement or false claim and therefore Defendants are liable to Plaintiff, the record owner of real property, for \$3,000.00 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs.

250. Plaintiff is entitled to judgment against Defendants jointly and severally, for \$1,000.00 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs for each lien that Defendants failed and or refused to release or correct.

251. Plaintiff is entitled to judgment against Defendants jointly and severally, for \$3,000.00 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs for Defendants for each wrongful lien that Defendants filed or caused to be filed.

252. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### FIFTH CAUSE OF ACTION

#### FAILURE TO CANCEL LIENS

253. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

254. That Plaintiff requested Defendants to cause said lien(s) to be canceled of record within ten days from the request, and Defendants failed to cancel Defendants lien(s) within the time aforesaid shall forfeit and pay to Plaintiff the sum of \$20.00 per day until the same shall be canceled.

255. Plaintiff is entitled to judgment against Defendants jointly and severally for \$20.00 per day per lien until the same shall be canceled.

256. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions



of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's right.

#### SIXTH CAUSE OF ACTION

##### INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

257. Plaintiff incorporates herein by this reference paragraphs as if set forth fully herein.

258. Defendants intentionally and deliberately inflicted emotional distress on Plaintiff by, by conspiring against Plaintiff and by Defendant's unlawful acts against Plaintiff and Plaintiff's property.

259. Defendants knew or should have known that emotional distress was the likely result of Defendant's conduct.

260. Defendants conduct was extreme and outrageous.

261. Defendants' actions were and are the cause of Plaintiff's distress.

262. As a result of Defendants extreme and outrageous conduct, Plaintiff, will continue to be emotionally distressed due to the intentional commission of Defendants unlawful acts against Plaintiff and Plaintiff's property.

263. As a result of Defendants extreme and outrageous conduct, Plaintiff has suffered mental pain and anguish, embarrassment, humiliation, severe emotional trauma.

264. Defendants' activities constitute extreme and outrageous conduct, prohibited by various statutes, constitutional provisions and common decency, which goes beyond all possible bounds of decency and is regarded as atrocious and intolerable in a free or civilized society.

265. Defendants' activities were done to cause or with disregard of a substantial probability of causing severe emotional distress.

266. The activities of Defendants were willful, wanton, outrageous, morally depraved, in violation of various statutes.

267. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's right.

#### SEVENTH CAUSE OF ACTION

##### NEGLEGENT INFLICTION OF EMOTIONAL DISTRESS

268. Plaintiff incorporates herein by this reference paragraphs as if set forth fully herein.

269. Plaintiff further alleges that the activities of Defendants amount to negligent infliction of emotional injury on Plaintiff, by Defendant. This Count is pleaded in the alternative to the above Count and in addition to the above Count.

270. Defendants continually and negligently inflicted emotional distress on Plaintiff.

271. As a result of Defendants negligent conduct, Plaintiff has suffered and will continue to suffer physical symptomatology, emotional trauma, embarrassment, and humiliation.

272. The activities of Defendants constitute negligence and or gross negligence and led to the violations of various statutes.

273. When Defendants violated Plaintiff's rights, Defendants negligently inflicted emotional distress on the Plaintiff.

274. The actions of Defendants were undertaken with gross negligence and the subsequent results caused Plaintiff to suffer extreme emotional distress.

275. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions

of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's right.

#### EIGHTH CAUSE OF ACTION

##### INTERFERENCE WITH QUIET ENJOYMENT OF THE LAND

276. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

277. Defendants have unreasonably and substantially interfered with the use and enjoyment of Plaintiff's property.

278. That Defendants exercise of rights over Plaintiff's properties and or of some right over or in connection with Plaintiff's properties has damaged Plaintiff and would not tolerated by the ordinary owner.

279. Defendants directly interfered with Plaintiff's quiet enjoyment of Plaintiff's properties.

280. Defendants indirectly interfered with Plaintiff's quiet enjoyment of Plaintiff's property.

281. Defendants authorized and or perpetuated unlawful claims that substantially interfered with plaintiff's possession, use, or enjoyment of Plaintiff's property.

282. That the interference with Plaintiff's use, possession, or enjoyment of Plaintiff's property was a proximate and foreseeable result of Defendants unreasonable exercise of control and or use of Plaintiff's property.

283. Defendants' intentional interference with Plaintiff's quiet enjoyment of Plaintiff's properties was done maliciously.

284. Defendants' intentional interference with Plaintiff's quiet enjoyment of Plaintiff's properties was an ongoing nature.

285. Defendants violated Plaintiff's clearly established rights to quiet enjoyment.

286. Defendant violated Plaintiff's rights to quiet enjoyment and Plaintiff was thereby damaged.

287. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's right to quiet enjoyment

#### NINTH CAUSE OF ACTION

#### CIVIL ACTION WAS WITHOUT MERIT AND NOT BROUGHT OR ASSERTED IN GOOD FAITH

288. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

289. Defendant Powder Mountain Water and Sewer civil action filed against Plaintiff on October 21, 1998, was without merit.

290. Defendant Powder Mountain Water and Sewer civil action filed against Plaintiff on March 1, 2000, was without merit.

291. Defendants' civil actions against Plaintiff were not brought or asserted in good faith.

292. Defendant Powder Mountain Water and Sewer civil actions against Plaintiff were in violation of Utah Code 78-27-56.

293. Plaintiff is entitled all attorney fees incurred by Plaintiff in Plaintiff's defense of Defendant Powder Mountain Water and Sewer's civil actions.

294. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendant and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's right to be free from civil actions that are not brought or asserted in good faith and without merit.

#### TENTH CAUSE OF ACTION

##### UNJUST ENRICHMENT

295. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

296. That Powder Mountain Inc. has converted Plaintiff's water connection valued by Powder Mountain at \$8,000.00 to Powder Mountain Inc.'s benefit.

297. That Plaintiff has not authorized Powder Mountain Inc. to terminate Plaintiff's interest in the water connection valued by Powder Mountain at \$8,000.00.

298. That Powder Mountain Inc. has been unjustly enriched by the unilateral forfeiture of Plaintiff's water connection.

299. Plaintiff is entitled to judgment against Defendant Powder Mountain Inc. for \$8,000.00 for Defendant Powder Mountain Inc's. unilateral forfeiture of Plaintiff's water connection.

300. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

## ELEVENTH CAUSE OF ACTION

### CONVERSION OF PROPERTY

301. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

302. That when Plaintiff purchased Plaintiff's property, Defendant valued Plaintiff's water connection at \$8,000.00.

303. That Plaintiff has fully paid Defendant Powder Mountain Inc for the water connection valued by Defendant Powder Mountain at \$8,000.00.

304. That it is or became Defendant Powder Mountain policy on July 1985 that "If your bill becomes over (90) days delinquent you will forfeit your connection ownership and when you wish to make a connection you will have to reapply."

305. That Defendant Powder Mountain Inc. has converted Plaintiff's water connection valued by Defendant Powder Mountain Inc. at \$8,000.00 to Powder Mountain Inc. benefit.

306. Plaintiff is entitled to judgment against Defendant Powder Mountain Inc. for \$8,000.00 for Defendant Powder Mountain Inc's.. conversion of Plaintiff's water connection.

307. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

## TWELFTH CAUSE OF ACTION

### BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

308. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

309. That there was an implied promise of good faith and fair dealing in the contract(s) or agreement(s) between Defendants and Plaintiff.

310. That Plaintiff did all, or substantially all of the significant things that the contract required Plaintiff to do or that Plaintiff was excused from having to do those things.

311. That all conditions required for Defendants performance had occurred.

312. That Defendants unfairly interfered with Plaintiff's right to receive the benefits of the contract or agreement.

313. That Plaintiff was harmed by Defendants conduct, unlawful activities and breach of contract or agreement.

314. Defendants breached Defendants' covenant of good faith and fair dealing.

315. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### THIRTEENTH CAUSE OF ACTION

##### WRONGFUL LIEN INJUNCTION

316. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

317. That Defendants filed, made, recorded or uttered wrongful lien(s) against Plaintiff's property.

318. Plaintiff is entitled to an injunction enjoining the Defendants from making, uttering, recording, or filing any further lien(s) without specific permission from the court.

319. Plaintiff is entitled to an order of the Court that the wrongful lien(s) be nullified.

#### FOURTEENTH CAUSE OF ACTION

#### DISHONEST BUSINESS PRACTICE

320. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

321. Defendants have engaged in a pattern of trickery, deceit, deliberate false statements, fraud and other acts of misconduct targeted at Plaintiff for an improper motive.

322. Defendants conduct towards Plaintiff has been malicious, reprehensible and unlawful.

323. Defendants intentionally through affirmative acts of misconduct caused economic injury to Plaintiff.

324. Defendants have employed intentionally deceptive business dealings with Plaintiff and others.

325. Defendants disregarded there obligations to Plaintiff.

326. Defendants continue to engage in their wrongful behavior.

327. Plaintiff placed a high degree of confidence and trust in Defendants as public officials.

328. Defendants' relationship as a public official to Plaintiff is one of loyalty, trust, disclosure, and confidence, calling for the utmost good faith and permitting no unfair benefits and or advantage to Defendants.

329. Defendants failed and or breaded its duty to Plaintiff as public officials.



330. Defendants' business practices have been dishonest.

331. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### FIFTEENTH CAUSE OF ACTION

##### DEFAMATION

332. Plaintiff incorporates herein by this reference paragraphs as if set forth fully herein.

333. Plaintiff claims that Defendants harmed Plaintiff by making one or more defamatory statements about Plaintiff.

334. That Defendants made one or more of the statements to a person(s) other than Plaintiff.

335. That this person/these people reasonably understood that the statement(s) were about Plaintiff.

336. That Defendants failed to use reasonable care to determine the truth or falsity of Defendants statement(s).

337. Defendants' wrongful conduct was a substantial factor in causing harm to Plaintiff's property, business, trade, profession, or occupation.

338. Defendants' wrongful conduct was a substantial factor in causing expenses Plaintiff had to pay as a result of the defamatory statements.

339. Defendants' wrongful conduct was a substantial factor in causing harm to Plaintiff's reputation.

340. Defendants' wrongful conduct was a substantial factor in causing shame, mortification, or emotional distress.

341. Defendants acted with malice, oppression or fraud.

342. Defendants have committed multiple acts of defamation against Plaintiff.

343. Defendants have made statements that were false and defamatory and were made with knowledge of their falsity or with reckless disregard for the truth and or were made with knowledge that said statements would tend to expose Plaintiff or any other living person to public hatred, contempt, or ridicule.

344. Defendants made statements impeaching the honesty, integrity or reputation of Plaintiff and thereby exposing Plaintiff to public hatred, contempt or ridicule which statements were false and or misleading.

345. Defendants' statements that have injured Plaintiff in Plaintiff's business and or occupation.

346. Defendants made defamatory statements that have caused irreparable harm to Plaintiff, including harm to Plaintiff's reputation, credibility and good will.

347. Defendants statements were made with both actual malice and or express malice and despite knowledge of a high probability that injury or damage to Plaintiff would result Defendants deliberately proceeded to act in a conscious or intentional disregard of the high probability of injury to Plaintiff or deliberately proceeded to act with indifference to the high probability of injury to Plaintiff.

348. Plaintiff is entitled to judgment against Defendants for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants

and each Defendant as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### SIXTEENTH CAUSE OF ACTION

##### CONSPIRACY TO DEFAME

349. Plaintiff incorporates herein by this reference paragraphs as if set forth fully herein.

350. Defendants have knowingly and willfully conspired, combined and agreed with others to defame Plaintiff with false and misleading information about Plaintiff, despite Defendants knowledge that the defamatory statements were false and or with a reckless disregard to their truth.

351. Defendants have knowingly and willfully conspired, combined and agreed with each other and others to gain and exercise undue leverage over Plaintiff. In so doing Defendants acted with a willful and wanton disregard for the rights of Plaintiff.

352. Defendants knew or should have known that said false and misleading information about Plaintiff would tend to expose Plaintiff or any other living person to public hatred, contempt, or ridicule.

353. Defendants' conspiracy renders Defendants liable for the statements and any injury caused by his co-conspirator.

354. Defendants have committed overt acts in furtherance of the conspiracy, including but not limited to those alleged above.

355. Defendants' conspiratorial activities have directly and proximately caused Plaintiff to suffer foreseeable and significant economic and reputational damage. But for the Defendants and their co-conspirator(s) Plaintiff would not have suffered these damages.

356. Defendants' conspiracy to defame Plaintiff has caused serious and irreparable harm to Plaintiff, including harm to Plaintiff's reputation, credibility and good will.

357. Defendants statements were made with both actual malice and or express malice and despite knowledge of a high probability that injury or damage to Plaintiff would result deliberately proceeded to act in a conscious or intentional disregard of the high probability of injury to Plaintiff or deliberately proceeded to act with indifference to the high probability of injury to Plaintiff.

358. Plaintiff is entitled to judgment against Defendants for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### SEVENTEENTH CAUSE OF ACTION

##### COMMON LAW CONSPIRACY

359. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

360. Defendants committed numerous overt acts including but not limited to the filing of multiple wrongful liens, fraud, breach of contract, intentional infliction of emotional distress, dishonest business practices that were part of the conspiracy.

361. Defendants performed said overt acts in furtherance of their agreement and or conspiracy.

362. Defendants actions were tortious and or unlawful.

363. Plaintiff suffered harm and damages as a direct result of Defendants acts of conspiracy to deprive Plaintiff of Plaintiff's property.

364. Plaintiff is entitled to judgment against Defendants for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### EIGHTEENTH CAUSE OF ACTION

##### SLANDER

365. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

366. Defendants slandered Plaintiff.

367. Defendants made false allegations against Plaintiff that Defendants knew were false or should have known to be false.

368. Defendants have communicated to others false statements to maliciously defame Plaintiff which impeached the honesty, integrity, virtue or reputation of Plaintiff and thereby exposed Plaintiff to hatred, contempt or ridicule.

369. As a direct and proximate result of Defendants false statements of Plaintiff, Plaintiff's honesty, integrity and reputation was impeached.

370. As a direct and proximate result of Defendants communications Plaintiff was subjected to public hatred, contempt, and ridicule.

371. As a direct and proximate result of Defendant communications Plaintiff suffered the loss of esteem, respect, good will, and confidence of his peers.

372. As a direct and proximate result of Defendants actions, Plaintiff was harmed in his reputation.

373. As a direct and proximate result of Defendants actions, Plaintiff was prejudiced in his profession.

374. Plaintiff is entitled to judgment against Defendants for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### NINETEENTH CAUSE OF ACTION

##### NEGLIEGENT AND OR FRAUDLENT REPRESENTATIONS

375. Plaintiff incorporates herein by this reference paragraphs as if set forth fully herein.

376. That Defendant placed numerous liens on Plaintiff's property.

377. That Defendants knew or should have known that the liens filed against Plaintiff's property contained material false statement(s).

378. That Defendant filed two civil complaints against Plaintiff and Plaintiff's properties.

379. That both complaints were dismissed by Defendant.

380. That Defendant thereafter filed a "certified statement" with the Weber County Treasurer stating that Plaintiff owed Defendant \$24,120.10.

381. That Defendants knew and or should have known that the amount certified by Defendants as owed by Plaintiff, was contested by Plaintiff and Defendants could not obtain adjudication from the Court that the amount due to Defendant was \$24,120.10.

382. That Defendant's dismissal and subsequent filing of the lien with an amount not owed by Plaintiff constitutes fraud on Plaintiff.

383. That Defendant's dismissal and subsequent filing of the lien with an amount not owed by Plaintiff constitutes fraud on the Court.

384. Defendants' intentional use of deceit or dishonest means deprived Plaintiff of Plaintiff's, property and legal rights.

385. The Defendants took actions that were an unjust advantage over Plaintiff and Plaintiff was injured thereby.

386. That Defendants actions were malicious.

387. That the Defendants personally participated in the unlawful conduct, acted jointly with other Defendants who participated or acquiesced in the unlawful conduct, failed to intervene to stop other Defendants from engaging in the unlawful conduct, or knew of and condoned and or promoted the unlawful conduct.

388. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### TWENTIETH CAUSE OF ACTION

##### INVERSE CONDEMNATION

388. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

389. Defendants have effectively prevented the use of Plaintiff's property for the purposes that Plaintiff designed Plaintiff's properties for.

390. That no reasonable person could do business under the threats and adverse action of Defendants.

391. Defendant have used its power to so restrict the use of Plaintiff's properties and Plaintiff that Plaintiff has been deprived of the use of Plaintiff's property.

392. Defendants have prevented Plaintiff from using and enjoying Plaintiff's property

393. Defendants' acts have prevented Plaintiff from using Plaintiff's property and therefore an inverse condemnation has occurred.

394. Plaintiff has been damaged by Defendant inverse condemnation of Plaintiff's properties.

395. Defendants' acts were deliberate and or intentional and created unreasonable delays for Plaintiff.

396. Defendants have not instituted formal proceedings against Plaintiff to acquire any right to Plaintiff's property.

397. Plaintiff is entitled to judgment against Defendant jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendant and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### TWENTY FIRST CAUSE OF ACTION

#### NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS

398. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

399. Defendant actions and or representations constitute negligence and or gross negligence.

400. Defendant owed a duty of care to Plaintiff, yet they failed to use reasonable and ordinary care and were negligent and or grossly negligent.



401. Defendant's actions and or conduct towards Plaintiff, when viewed objectively, at the time of the occurrence, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff.

402. Defendants moreover, had actual, subjective awareness of the risks involved, but nevertheless preceded with conscious indifference to the rights, safety and or welfare of Plaintiff.

403. The risk was of such a nature and degree that Defendants failure to perceive it constituted a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from Defendant standpoint.

404. These negligent acts committed against Plaintiff were undertaken in furtherance of and were direct and foreseeable results of the conspiratorial agreement among Defendants.

405. As a result of the negligent and or gross negligent conduct of Defendants, Plaintiff suffered physical injuries and severe emotional distress.

406. The negligent conduct of Defendants was a direct and proximate cause of legal damage to the Plaintiff.

407. The actions of Defendants constituted deliberate, willful, or wanton conduct.

408. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

## TWENTY-SECOND CAUSE OF ACTION

### MAIL FRAUD

409. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

410. Defendants sent Plaintiff numerous letters through the United States Mail.

411. Defendants' letters were for an improper purpose.

412. Defendants' letters were to deprive Plaintiff of Plaintiff's rights and or property.

413. Defendants knew or should have known that the letters and or notices contained material misstatements of fact.

414. Defendants knew or should have known that the letters constituted fraud on Plaintiff.

415. Defendants letters sent to Plaintiff constituted extortion on Plaintiff.

416. Defendants through the letters perpetrated fraud on Plaintiff through the use of the United States Postal Service.

417. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### TWENTY-THIRD CAUSE OF ACTION

##### BREACH OF FIDUCIARY DUTY

418. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

419. Defendants owed a fiduciary duty to Plaintiff.

420. Plaintiff placed trust and confidence in Defendants who thereby gained domination and superiority over Plaintiff.

421. Defendants must place Plaintiff's interest ahead of its own.

422. Defendants have a duty to act in a reasonable manner so as not to cause injury to Plaintiff and others.

423. Defendants' actions created a confidential relationship.

424. Defendants controlled and or attempted to control the affairs and or property of the Plaintiff.

425. Defendants acted as advisors on behalf of Plaintiff and or Plaintiff business and or properties thereby creating a relationship of trust and confidence and a resulting fiduciary duty.

426. Defendants exercised control over the decision-making processes of the Plaintiff and or Plaintiff's business and or properties amounting to a domination of the Plaintiff's will.

427. That Plaintiff has relied upon the advice of Defendants.

428. That Plaintiff has been damaged based upon Plaintiff's trust and or confidence in Defendant and the violation thereof.

429. Defendant breached Defendant fiduciary duty to Plaintiff.

430. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant conduct as alleged herein, violates the fiduciary duty due Plaintiff.

#### TWENTY-FOURTH CAUSE OF ACTION

##### KNOWINGLY RECKLESSLY, MALICIOUSLY, MISCONDUCT

431. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

432. Defendants are vicariously liable under state law as shown above for the acts, omissions and conspiracies of the individual Defendants and is thus responsible for the resultant damages.

433. It was the conscious objective and desire of Defendants to deprive Plaintiff of Plaintiff's rights and or property and Defendants intentionally, or with intent or willfully with respect to the nature of Defendants conduct deprived Plaintiff of Plaintiff's rights and or property and committed other unlawful acts.

434. Defendants knowingly, or with knowledge, with respect to Defendants conduct or to circumstances surrounding Defendant's conduct violated Plaintiff's rights and or deprived Plaintiff of Plaintiff's property.

435. Defendant knowingly, or with knowledge, with respect to a result of Defendant's conduct was reasonably certain to cause Plaintiff's rights to be violated and or deprive Plaintiff of Plaintiff's property.

436. Defendants recklessly, or maliciously, with respect to circumstances surrounding Defendants' conduct or the result of Defendants' conduct when Defendant was aware of but consciously disregarded a substantial and unjustifiable risk that the circumstances exist or the result would occur in violation of Plaintiff's rights and or the deprivation of Plaintiff's property.

437. The risk was of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the Defendants' standpoint.

438. Each Defendant's conduct was as a result of intentional misconduct and or gross negligence including reckless, willful, or wanton misconduct.

439. Each Defendant's conduct was through gross incompetence, gross negligence, or a pattern of incompetence or negligence.

440. Defendants intentionally, knowingly, recklessly, with criminal negligence deprived Plaintiff of Plaintiff's rights and property and committed other unlawful acts.

441. It was Defendants conscious objective or desire to engage in the conduct and cause Plaintiff to be deprived of Plaintiff's rights.

442. Each Defendant directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in the violation of Plaintiff's rights.

443. Defendant's actions, done with malice, were especially extreme and outrageous, and the emotional distress suffered by this Plaintiff was extreme. The Defendants knew or should have known that such emotional distress would result from Defendants conduct, and that there was a special likelihood that genuine and serious mental distress would arise from these special circumstances.

444. The acts and conduct of the individual Defendants also represent liability under state tort law, constituting negligence, gross negligence, and defamation.

445. Plaintiff is entitled to judgment against all Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of the Defendants and each Defendant conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights.

#### TWENTY-FIFTH CAUSE OF ACTION

#### RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) § 1962(C) CLAIM

446. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein.

447. Defendants violated Section § 1962(c), of Title 18 United States Code, that Defendants, did knowingly and intentionally continue “conduct or behavior” constituting predicate acts in furtherance of their racketeering scheme or artifice to defraud Plaintiff of Plaintiff’s rights and property, violate state laws, deprived Plaintiff of Plaintiff’s constitutional rights and violated Plaintiff’s rights under color of official right, which were the direct, or indirect causation of Plaintiff’s injuries to Plaintiff’s person and business.

448. Plaintiff’s claim for damages lost income, deprivation of rights, economic duress and other future economic opportunities by virtue of Defendants racketeering activities targeting Plaintiff by, extortion, filing civil actions for improper purposes, fraud, and conspiracy to deprive Plaintiff of Plaintiff’s property for unlawful financial gain and to interfere with commerce by extortion in violation of Racketeer Influenced and Corrupt Organizations Act and the Organized Crime Control Act of 1970.

449. Defendants’ violation of Plaintiff’s property rights affected interstate commerce.

450. Defendants represent a group of persons associated together for a common purpose of engaging in a course of conduct constituting an RICO enterprise.

451. Defendants’ unlawful activities through said enterprise affect interstate commerce.

452. Defendants are employed by or associated with the Defendant Powder Mountain Inc..

453. Defendants agreed to and did conduct and participate in the conduct of the enterprise affairs through a pattern of racketeering activity described above, in violation of 18 U.S.C. § 1962(c)..

454. Pursuant to and in furtherance of their racketeering activities, the RICO Defendants committed multiple related acts of obstruction of justice.

455. Defendants acquired and/or maintained control over said enterprises through a pattern of racketeering activities, as set forth hereinabove, in violation of 18 U.S.C. § 1962(b).

456. The acts set forth above constitute a pattern of racketeering activity pursuant to 18 U.S.C. § 1961(5).

457. As a direct and proximate result of the RICO Defendants racketeering activities and violations of 18 U.S.C. § 1962(c), Plaintiff has suffered injury to his property and property rights.

458. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights and property.

#### TWENTY-SIXTH CAUSE OF ACTION

##### RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) § 1962(D) CLAIM

459. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein

460. Defendants acting in conspiracy, did knowingly and intentionally continue "conduct or behavior" constituting predicate acts in furtherance of their racketeering scheme or

artifice to defraud, extort Plaintiff of Plaintiff's rights and property, violate state laws, which were the direct, or indirect causation of Plaintiff's injuries to Plaintiff's person and business.

461. Defendants knew that their predicate acts were part of a pattern of racketeering activity and agreed to the commission of those acts to further the schemes to deprive Plaintiff of Plaintiff's rights and property.

462. Defendants conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. § 1962(d).

463. As a direct and proximate result of the Defendants conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(c), Plaintiff has suffered injury to Plaintiff's property and rights.

464. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights and property.

#### TWENTY-SEVENTH CAUSE OF ACTION

##### RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT (RICO) § 1964(C) CLAIM

465. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein

466. Plaintiff was injured in Plaintiff's business and property by reason of Defendants violation of section 1962.

467. Plaintiff is entitled to recover threefold the damages Plaintiff sustains and the cost of the suit, including a reasonable attorney's fee.



468. Plaintiff is entitled to judgment against Defendants jointly and severally, for threefold the damages, actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights and property.

## TWENTY-EIGHTH CAUSE OF ACTION

### HOBBS ACT

469. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein

470. Defendants induced or attempted to induce Plaintiff to give up Plaintiff's property, property rights and or constitutional rights.

471. Defendants use or attempt to use Plaintiff's reasonable fear of physical injury and or economic harm in order to induce Plaintiff to consent to give up Plaintiff's property.

472. Defendants conduct actually or potentially obstructed, delayed or affected interstate commerce.

473. Defendant's actual and or threatened use of force, violence or fear was illegal, for an improper motive and wrongful.

474. Defendants knew or should have known that Defendants conduct was illegal and or wrongful.

475. Defendant coerced Plaintiff through Defendants misuse of public office.

476. Defendants conspired with each other in furtherance of Defendants' plan to deprive Plaintiff of Plaintiff's property and rights which actually or potentially obstructed, delayed or affected interstate commerce.

477. Defendants' illegal conduct harmed Plaintiff.

478. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights and property.

#### TWENTY-NINTH CAUSE OF ACTION

##### DECLARATORY

479. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein

480. That Defendant Powder Mountain Water and Sewer policies are in violation of Utah Code.

481. That Defendant Powder Mountain Water and Sewer policies are unreasonable and no person should be subject to the penalties imposed by Defendant Powder Mountain Water and Sewer.

482. Plaintiff is entitled to a declaratory judgment that Defendant Powder Mountain Water & Sewer provide Plaintiff with Water and Sewer Connections upon terms and conditions ordered by this Court.

#### THIRTIETH CAUSE OF ACTION

##### INJUNCTION

483. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein

484. Plaintiff is entitled to an injunction enjoining Weber County from collecting or attempting to collect any taxes on behalf of Defendant Powder Mountain Water and Sewer relating to Plaintiff's property.

### THIRTY FIRST CAUSE OF ACTION

#### SLANDER OF TITLE

485. Plaintiff incorporates herein by this reference the foregoing paragraphs as if set forth fully herein

486. Defendants multiple unlawful claims have slandered the title of Plaintiff's property.

487. That Plaintiff has been damaged by Defendants slander of title.

488. That Defendants knew or should have known that Defendants actions would cause Plaintiff damages.

489. Plaintiff is entitled to judgment against Defendants jointly and severally, for actual, general, special and compensatory damages and for punitive damages because the actions of Defendants and each Defendant's conduct as alleged herein, is outrageous and demonstrates a callous indifference to Plaintiff's rights and property.


**WHEREFORE, Plaintiff requests that this Court grant the following relief,**

1. For declaratory judgment that Defendant Powder Mountain Inc. convey the at subject property to Plaintiff and or Plaintiff's assigns;
2. For declaratory judgment that Defendants have no right title or interest in the Subject Property;
3. For a preliminary and permanent injunction enjoining Defendants from making, uttering, recording, or filing any further lien(s) without specific permission from the court;

4. For judgment against Defendants jointly and severally for the greater of: (a) twice the amount by which the wrongful lien(s) exceeds the amount actually due; or (b) the actual damages incurred by Plaintiff for each lien that Defendants filed;
5. For judgment against Defendants jointly and severally for the greater of: (a) treble any actual damages proximately caused by Defendants wrongful lien(s); or (b) for \$1,000.
6. For judgment against Defendants jointly and severally, for \$1,000.00 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs for each lien that Defendants failed and or refused to release or correct.
7. For judgment against Defendants jointly and severally, for \$3,000.00 or for treble actual damages, whichever is greater, and for reasonable attorney fees and costs for Defendants for each wrongful lien that Defendants filed or caused to be filed.
8. For judgment against Defendants jointly and severally for \$20.00 per day per lien from the date of Plaintiff's notice(s) until the same shall be canceled;
9. For judgment against Defendants jointly and severally in the amount of \$8,000.00 plus interest for the water connection converted by Defendants;
10. For judgment against Defendants jointly and severally in the amount \$1,000,000.00 per year for each and every year that Defendants have unlawfully interfered with Plaintiff's property rights;
11. For judgment against Defendants jointly and severally for actual, general, special damages and punitive damages in an amount to be determined at trial for all other cause of actions not specifically pled in Plaintiff's prayer;

12. For an injunction enjoining Weber County from collecting or attempting to collect any taxes on behalf of Defendant Powder Mountain Water and Sewer relating to the at subject property;
13. For declaratory judgment that Plaintiff be provided water and sewer connections for the at subject property upon Plaintiff's application upon terms of an order of this Court.
14. For Plaintiff's past attorney fees and costs for defending Defendants unlawful and or malicious prosecutions, for attorney fees if Plaintiff requires the service of an attorney, court costs and for disbursements in pursuing this action and
15. For such other and further relief as the Court deems just and proper.

DATED this March 22, 2006.

  
Bruce Edwards  
Pro Se

**JURY DEMAND**

Plaintiff hereby demand a trial by jury of all issues so triable.